SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 704

IRENE MORGAN, APPELLANT,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

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[fol. 1]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

Record No. 2974

IRENE MORGAN

versus

COMMONWEALTH OF VIRGINIA

Petition for Writ of Error

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Irene Morgan, respectfully represents that on the 16th day of July, 1944, a warrant was issued upon the oath of R. P. Kelly charging that, on the date aforesaid, she did "Unlawfully refuse to move back on the Greyhound Bus in the section for colored people"; that whereupon she was tried in the Circuit Court of Middlesex County without a jury, trial by jury having been waived, upon an amended warrant charging that, on the date aforesaid, she did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd"; that whereupon the said Court found her guilty of said offense and sentenced her to pay a fine of Ten ($10.00) Dollars, and final judgment thereupon was entered on the 18th day of October, 1944.

A transcript of the record in this case and of the judgment therein is herewith filed as a part of this petition.

[fol. 2] ERRORS ASSIGNED

Your petitioner is advised and represents to your Honors that the said judgment is erroneous, and that she is aggrieved thereby in the following particulars, namely:

First. The action of the Court in overruling petitioner's motion, first made at the conclusion of the presentation of the Commonwealth's evidence-in-chief, to strike the evi-

dence of the Commonwealth and dismiss the case upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to her as she was, as shown by the evidence, an interstate passenger traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article 1, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; which motion was renewed and again overruled at the conclusion of the entire case after both the Commonwealth and your petitioner had rested.

Bill of Exception No. 2, Record, pp. 34-35.

Second. The action of the Court in overruling petitioner's motion to set aside said Court's decision and judgment of her guilt of the aforesaid offense, and to award her a new trial, which motion was predicated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

Bill of Exception No. 3, Record, pp. 36-37.

Third. The action of the Court in overruling petitioner's motion for a new trial, which motion was predicated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said Court's decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

[fol. 3] Bill of Exception No. 4, Record, pp. 38-39.

Questions Involved in the Appeal

These assignments of error present two questions:

First: Is the statute upon which petitioner was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional?

Second. Should the statute upon which petitioner was prosecuted be construed as limited in its operation to passengers in intrastate commerce, and, therefore, as inapplicable to petitioner?

Statement of the Facts

In the statement of the facts and the argument, petitioner will be referred to as the defendant, in accordance with the position occupied by her in the trial court.

On July 16, 1944, defendant, who is a Negro or colored person (R., pp. 9, 21), was a passenger upon a bus of the Richmond Greyhound Lines, Inc. She boarded the bus at Hayes Store, in Gloucester County, Virginia, and was traveling to the City of Baltimore, Maryland (R., pp. 9, 21). R. P. Kelly, an employee of the Greyhound Lines for six years, was the driver in charge and control of the bus (R., pp. 9, 11, 21).

When the bus arrived in Saluda, Virginia, the driver perceived defendant and another colored woman, the latter carrying an infant, seated in a seat forward of the long seat in the extreme rear of the bus (R., pp. 9, 10). Defendant was requested by the driver to move from said seat, and, upon her refusal so to do, the driver procured a warrant charging the offense for which she was prosecuted in the court below.

As to the condition of the bus, the events occurring and the circumstances leading up to and surrounding defendant's refusal to leave her seat, the testimony introduced by the Commonwealth and the defendant, respectively, is in hopeless conflict. Defendant concedes the binding effect of the decision of the trial court in this regard, but submits that as it was shown without contradiction that she and the Greyhound Company were, respectively, interstate passenger and carrier, she could not be prosecuted for violating the statute aforesaid upon the basis of either the Commonwealth's or her own evidence.

The evidence of the Commonwealth, consisting chiefly of the testimony of the bus driver, tended to show that at the [fol. 4] time defendant's removal from the seat was sought, there were two vacancies on the long rear seat in the extreme rear of the bus, which seat is designed to accommodate five persons, and was then occupied by three colored passengers; that all other seats in the bus were occupied;

that defendant and her seatmate were requested to move back into these seats, the driver advising them that under the rules of the bus company, he was required to seat white passengers from the front of the bus backward and colored passengers from the rear of the bus forward; that defendant refused to move, whereupon the driver procured a warrant charging her with a violation of the segregation law through her refusal to move.

On the other hand, defendant's version, which was corroborated by the testimony of four other witnesses, including Estelle Fields, her seatmate, was that the seat in question became vacant when the bus stopped in Saluda; that she then moved from the long rear seat which, from Hayes Store to Saluda, had been occupied by six or seven passengers, including herself, into said seat, the latter being the only vacant seat in the bus; that about five minutes later a white couple boarded the bus, whereupon the driver approached defendant and her seatmate and told them that they must get up so that the white couple might sit down; that she, the defendant, informed the driver that she was willing to exchange the seat she occupied for another on the bus, but was unwilling to stand, in reply to which the driver stated that colored passengers would be seated only after all white passengers had obtained seats that when asked by defendant where she would sit if she relinquished the seat she occupied the driver said nothing; that at the time she was directed to move, there were no vacant seats either on the long rear seat or elsewhere in the bus.

A second charge was lodged against the defendant as a consequence of events which allegedly occurred when the Sheriff and Deputy Sheriff of Middlesex came on the bus to execute the warrant obtained by the bus driver. The claim of the Commonwealth in this connection was that defendant resisted said officers in the discharge of their duties. This claim was substantially denied by defense witnesses, but defendant was convicted of the second offense also. By consent of the Commonwealth, the defendant, and the Court, both charges were tried together (R., p. 3), but no appeal from the conviction on the resisting charge was taken.

It appeared without controversy that the sources of the difficulties aboard the bus, whatever they may have been, were the efforts to remove defendant from the seat which

she occupied. The bus driver admitted that neither he nor [fol. 5] anyone else on the bus had any difficulties whatsoever with defendant until he sought to move her from her seat (R., p. 16), and both the Sheriff and Deputy Sheriff testified that defendant was in all respects orderly and well-behaved and caused no trouble whatsoever until efforts were commenced to remove her from the seat (R., pp. 18; 20).

The driver also testified that under the rules of the bus company all colored passengers were required to be seated from the rear of the bus forward and *that* all white passengers from the front of the bus backward, and that the general custom and policy pursued by his company upon buses traveling in or through the State of Virginia was to assign seats to colored and white passengers in this manner (R., p. 16), and so far as the record discloses, the sole ground upon which defendant's removal was sought and effected was that she is a Negro.

That defendant, at the time she allegedly committed the offense with which she was charged, and for which she was convicted, was a passenger traveling in interstate commerce upon the vehicle of an interstate public carrier, is conclusively established by the uncontroverted evidence for the Commonwealth as well as the defendant.

The Richmond Greyhound Lines, Incorporated, is regularly engaged in the business of transporting passengers for hire and reward from points within the State of Virginia to various points throughout the United States, including the City of Baltimore, Maryland, and was so engaged on July 16, 1944, the date upon which the events for which defendant was prosecuted occurred (R., p. 12). Passengers traveling to points outside the State of Virginia are, and were, on this day, regularly taken aboard its buses in Gloucester County, Virginia, including Hayes Store, and transported therein to points outside the State of Virginia (R., p. 12).

On July 15, 1944, defendant had purchased from the regular agent of the Richmond Greyhound Lines, Incorporated, at its ticket office at Hayes Store, Virginia, a through ticket for transportation from Hayes Store to Baltimore, Maryland (R., pp. 12, 13, 21). The stub of this ticket, which was introduced into evidence (R., p. 13), sets forth Hayes Store as the point of departure and Baltimore as the point of destination (R., p. 13). Defendant, as the holder of said

ticket, thereby became entitled to transportation from Hayes Store, Virginia, to Baltimore, Maryland, in a Greyhound bus (R., p. 12), and was entitled to transportation between the points aforesaid on July 16, 1944, in the bus upon which occurred the incidents out of which the prosecution grew (R., p. 12).

Upon boarding the bus at Hayes Store, for transportation [fol. 6] to Baltimore, defendant surrendered the ticket and R. P. Kelly, the driver, accepted the same (R., pp. 12, 21). Kelly was personally driving and operating the bus from the City of Norfolk, Virginia, to Baltimore (R., pp. 9, 11). This bus regularly made and was on that day making a continuous or through trip from Norfolk to Baltimore, traveling by way of and through the City of Washington, District of Columbia (R., pp. 11, 12).

After the arrest of defendant and her removal from the bus, Kelly prepared a transfer or token, identified at the trial by both Kelly (R., pp. 13, 14) and defendant (R., pp. 21, 22), in order that defendant might employ it for transportation from Saluda, Virginia, to Baltimore, Maryland, or for a cash refund of the fare paid for that portion of her trip between the said two points (R., p. 14). Kelly punched this transfer at the appropriate places to show Saluda as the point of beginning and Baltimore as the point of ending of the incompleted portion of her trip (R., pp. 14, 15).

Kelly testified that he would not have prepared or issued a transfer showing Saluda as the point of beginning and Baltimore as the point of ending, unless defendant had held a ticket entitling her to transportation on his bus to Baltimore (R., p. 15); and that he knew that all of the colored passengers remaining on the bus in Saluda, after those destined there had been discharged, held tickets to and were traveling to Baltimore, Maryland (R., p. 15). Defendant testified that she had no intention of leaving the bus prior to its arrival in Baltimore (R., p. 21).

At the conclusion of the presentation of the Commonwealth's evidence-in-chief, defendant moved to strike the evidence of the Commonwealth and to dismiss the case, upon the ground that the evidence for the Commonwealth was legally insufficient to sustain a conviction of the offense with which she was charged, and that no judgment thereupon could lawfully be rendered against her, for the reason that the statute upon which the prosecution was based

could not constitutionally be applied to her as she was, as shown by the evidence, an interstate passenger traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States, and also for the reason that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce (R., pp. 4, 20, 21, 34). At the conclusion of the entire case, after both the Commonwealth and the defendant had [fol. 7] rested, this motion was renewed (R., pp. 4, 5, 32, 33, 34, 35). After the Court had returned a finding that defendant was guilty of the offense charged (R., p. 5), defendant moved to set aside said finding (R., pp. 5, 6, 36, 37), and also moved for a new trial (R., pp. 6, 38, 39) upon the same grounds and for the same reasons. Each of said motions the Court overruled, to which action of the Court defendant in each instance excepted. Final judgment was entered sentencing defendant to pay a fine of $10.00 (R., pp. 6, 7).

Argument

I.

The Statute Upon Which the Prosecution was Based, if Construed As Applicable to Defendant, a Passenger in Interstate Commerce, Is Unconstitutional and Void.

The Statutes Involved

In 1930, the General Assembly of Virginia enacted a statute described by its title as "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." (Acts of Assembly, 1930, Chap. 128.)

This statute, now appearing as Sections 4097z to 4097dd of Michie's Code of Virginia, 1942, requires all passenger motor vehicle carriers to separate the white and colored passengers in their motor busses, and to set apart and

designate in each bus seats or portions thereof to be occupied, respectively, by the races, and constitutes the failure and refusal to comply with said provisions a misdemeanor (Sec. 4097z); forbids the making of any difference or discrimination in the quality or convenience of the accommodations so provided (Sec. 4097aa); confers the right and obligation upon the driver, operator or other person in charge of such vehicle, to change the designation so as to increase or decrease the amount of space or seats set apart for either race at any time when the same may be necessary or proper for the comfort or convenience of passengers so to do; forbids the occupancy of contiguous seats on the same bench by white and colored passengers at the same time; authorizes the driver or other person in charge of the vehicle to require any passenger to change his or her seat [fol. 8] as it may be necessary or proper, and constitutes the failure or refusal of the driver, operator or other person in charge of the vehicle, to carry out these provisions a misdemeanor (Sec. 4097bb); constitutes each driver, operator, or other person in charge of the vehicle, while actively engaged in the operation of the vehicle, a special policeman, with all of the powers of a conservator of the peace in the enforcement of the provisions of this statute, the maintenance of order upon the vehicle, and while in pursuit of persons for disorder upon said vehicle, for violating the provisions of the act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer, and protects him against the consequences of error in judgment as to the passenger's race, where he acts in good faith and the passenger has failed to disclose his or her race (Sec. 4097cc). Section 4097dd, upon which the prosecution in this case was based, reads as follows:

"All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assign-

ing separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

[fol. 9] *The Defendant's Contention*

Defendant is unconcerned with the applicability of the statute aforesaid to passengers whose journeys commence and end within the state. Nor does she base her contention of invalidity upon a claim of inequality or inferiority in the accommodations afforded members of her race. Her position is that since it appears without controversy that she was a passenger in interstate commerce upon an interstate carrier, the statute could not constitutionally apply, and therefore affords no basis for her prosecution.

Such Statutes Are Unconstitutional and Void When Applicable to Interstate Passengers

That state laws of the kind upon which this prosecution was based cannot be permitted to operate upon interstate commerce is apparent from principles too well known and settled to require citation of authority.

In recognition of the necessity of uniformity through national control in the regulation of commerce among the states, the Constitution of the United States, in Article I, Section 8, confers the regulatory power upon Congress and invests it with power to determine what these regulations shall be. Whenever the subject matter of regulation is in its nature national, and admits of only one uniform

system or plan of regulation, the power of Congress is exclusive, and cannot be encroached upon by the states. There is no room for the operation of the police power of the state where the legislature passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it.

It has therefore been flatly declared by the highest Court in the land that legislation which seeks to direct the interstate carrier with respect to the policy which it is to pursue in transporting the races is unconstitutional and void.

Hall v. *DeCuir*, 95 U. S. 485, 24 L. Ed. 547 (1877).

In that case the defendant was the owner of a steamboat licensed under Federal law for the coasting trade plying between New Orleans, Louisiana, and Vicksburg, Mississippi, and touching at intermediate points within and without Louisiana. Plaintiff, a Negro, took passage from New Orleans to Hermitage, Louisiana. Upon being refused a place in a cabin set apart by defendant for exclusive occupancy by white persons, plaintiff brought an action for damages under the Louisiana Act of 1869, which [fol. 10] prohibited "discrimination" because of race or color, and provided a right of action to recover damages. The defense was that the statute was inoperative as regards the defendant because, as to him, it was an attempt to regulate commerce among the states. The trial court gave judgment for the plaintiff, which was affirmed by the Supreme Court of Louisiana. In the Supreme Court of the United States, the judgment was reversed. The Court pointed out that the state court had construed the statute and held that it applied to interstate commerce, and that it guaranteed a passenger in interstate commerce equal rights and privileges in all parts of the conveyance, without discrimination on account of race or color, and that this construction was binding upon the Supreme Court and therefore excluded from the case all questions concerning its application to intrastate passengers. The Court, by Chief Justice Waite, said:

"But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration in our opinion occupies that posi-

tion. * * * While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set up for the use of whites without the state must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards if the law is enforced. It was to meet just such a case that the commercial clause in the Constitution was adopted. * * * Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others—* * * On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassment. No carrier of passengers can conduct his business with satisfaction to himself, or comfort, to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by [fol. 11] which he is to be governed from one end to the other of his route is a necessity in his business."

Pointing out that the exclusive legislative power, as respects interstate commerce, rests in Congress, the Court further said:

"This power of regulation may be exercised without legislation as well as with it. By refraining from action, Congress, in effect, adopts as its own regulations those which the common law or the civil law, where that prevails, has provided for the government of such business."

It was further held that Congressional inaction left the carrier free to adopt reasonable rules and regulations, and the statute in question sought to take away from him that power. It was therefore concluded that

"If the public good require such legislation it must come from Congress and not from the States."

Mr. Justice Clifford, in a concurring opinion, pointed out that

"Unless the system or plan of regulation is uniform, it is impossible of fulfillment. Mississippi may require the steamer carrying passengers to provide two cabins and tables for passengers, and may make it a penal offense for white and colored persons to be mixed in the same cabin or at the same table. If Louisiana may pass a law forbidding such steamer from having two cabins and two tables—one for white and the other for colored persons—it must be admitted that Mississippi may pass a law requiring all passenger steamers entering her ports to have separate cabins and tables, and make it penal for white and colored persons to be accommodated in the same cabin or to be furnished with meals at the same table. Should state legislation in that regard conflict, then the steamer must cease to navigate between ports of the states having such conflicting legislation, or must be exposed to penalties at every trip."

The same reasons which operated to destroy the constitutionality of the statute there involved operate equally to render unconstitutional legislation which seeks to compel a separation of interstate passengers upon a racial basis. Consequently, notwithstanding decisions in two states to the contrary, which have elsewhere been disapproved,

[fol. 12] *Illinois Central Railroad Company* v. *Redmond*, 119 Miss. 765, 81 S. 115 (1919);

Southern Railway Co. v. *Norton*, 112 Miss. 302, 73 S. 1 (1916);

Alabama & Vicksburg Ry. Co. v. *Morris*, 103 Miss. 511, 60 S. 41 (1912);

Smith v. *State*, 100 Tenn. 494, 49 S. W. 566 (1900);

the conclusion has been uniformly reached in the federal courts, and in the majority of state courts, that statutes requiring separate accommodations for white and Negro passengers are unconstitutional when applied to interstate passengers.

Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 200, 289 F. 598, 30 A. L. R. 50 (1923);

Thompkins v. *Missouri, K. & T. Ry. Co.* (C. C. A. 8th) 211 F. 391 (1914);

McCabe v. *Atchison, T. & S. F. Ry. Co.* (C. C. A. 8th) 186 F. 966 (1911);

Anderson v. *Louisville & N. R. Co.* (C. C. Ky.), 62 F. 46 (1894);

Brown v. *Memphis & C. R. Co.* (C. C. Tenn.), 5 F. 499 (1880);

State v. *Galveston H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227 (1916);

Huff v. *Norfolk & S. R. Co.*, 171 N. C. 203, 88 S. E. 344 (1916);

State v. *Jenkins*, 124 Md. 376, 92 A. 773 (1914);

Hart v. *State*, 100 Md. 596, 60 A. 457 (1905);

Carey v. *Spencer* (N. Y. Sup. Ct.), 36 N. Y. S. 886 (1895);

State ex rel. Abbott v. *Hicks*, 44 La. Ann. 770, 11 S. 74 (1892).

Such also has been the position of the Supreme Court of the United States where the same opinion has, in decisions subsequent to *Hall* v. *DeCuir*, been intimated or assumed.

McCabe v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 218 U. S. 71, 30 S. Ct. 667, 54 L. Ed. 936 (1910);

Chesapeake & O. Ry. Co. v. *Kentucky*, 179 U. S. 388, 21 S. Ct. 101, 45 L. Ed. 244 (1900);

Plessy v. *Ferguson*, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896);

[fol. 13] *Louisville, N. O. & T. Ry. Co.* v. *Mississippi*, 133 U. S. 587, 10 S. Ct. 348, 33 L. Ed. 784 (1890).

In *McCabe* v. *Atchison, Topeka & S. F. Ry. Co., supra*, the Eighth Circuit Court of Appeals was faced with the 1907 Oklahoma statute which required separate coaches and waiting rooms for white and colored passengers, and provided penalties for its violation by either the passengers or the carrier. Before the act went into effect, five Negro citizens of Oklahoma brought a suit in equity against five railroad companies to enjoin them from making racial distinctions upon the ground, *inter alia*, that the statute was repugnant to the commerce clause of the Federal Constitution. In holding that the act would be unconstitutional if applicable to interstate passengers, the Court said:

"It may be conceded that, if it applies to interstate transportation, it is a regulation of interstate commerce within

the meaning of the Constitution. We think this follows from the doctrine laid down by the Supreme Court in *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. Ed. 547. * * * For like reasons, the Oklahoma law, if as properly construed, it embraces or relates to interstate commerce, at all, would also be a regulation of that commerce. It compels carriers when operating in that state to exclude colored persons from cars or compartments set apart for white persons. The only difference between the Louisiana and the Oklahoma law is that the one compels carriers to receive into and the other to exclude colored persons from cars or compartments carrying white persons. They act alike directly upon the carrier's business as its passenger crosses the state line. Hence, if one is a regulation of interstate commerce, the other must be. The contention, therefore, that the provisions of the Oklahoma statute do not amount to a regulation of interstate commerce, if they concern that commerce at all, is untenable."

Likewise, in *State ex rel. Abbott* v. *Hicks*, *supra*, the defendant, a Pullman official, was prosecuted for violation of the 1890 Louisiana act requiring separate coaches for the races. There was a plea to the jurisdiction and a motion to quash the information on the ground that the passenger involved was an interstate passenger. The lower court sustained a demurrer to the plea and motion, and the defendant took the case to the Supreme Court of Louisiana on *certiorari*, where the judgment was reversed. This court, construing the decision in *Louisville, New Orleans & Texas Ry. Co.* v. *Mississippi*, *supra*, held:

[fol. 14] "The terms of the decision left no doubt that the Court (Supreme Court of the United States) regarded the statute as unconstitutional if it applied to interstate passengers, and only upheld it because construed by the Supreme Court of Mississippi as applicable only to domestic passengers. * * * These decisions leave no room for question that the jurisprudence of the United States Supreme Court holds such statutes as the one here presented to be only valid in so far as they apply to domestic transportation of passengers or goods, and that, as applicable to interstate passengers or carriage, they are regulations of interstate commerce, prohibited to the states by the constitution of the United States."

Again, in *Huff* v. *Norfolk & Southern R. Co.*, *supra*, plaintiff, a white deputy sheriff who was carrying a Negro

prisoner from Norfolk, Virginia, to Newbern, North Carolina, was compelled by defendant to ride in a coach on defendant's train maintained for the exclusive occupancy of Negro passengers, in compliance with the statutes of North Carolina requiring separate accommodations for the races. He then brought this action for damages. In holding that the statute could not be applied to this case, the court said:

"While there is learned and forcible decision to the contrary (*Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566), it seems to be the trend of opinion and the decided intimation of the Supreme Court of the United States, on the subject that state legislation of this character may not extend to a case of interstate traffic."

And, in *Hart* v. *State*, *supra*, the appellant, a Negro, held a ticket from New York to Washington entitling him to transportation over a line extending from Pennsylvania through Delaware and into Maryland. Upon his refusal to take the seat assigned to him, he was indicted under the 1904 Maryland statute requiring separate coaches for white and colored passengers. A plea in abatement was filed, whereupon the trial court sustained a demurrer to the plea and appellant was thereupon convicted. Upon appeal, however, the conviction was reversed. It was argued by the Attorney General for the state that the statute was constitutional as a police measure, although it affected interstate passengers, to which contention the court replied that

"Although the state has power to adopt reasonable police regulations to secure the safety and comfort of passengers [fol. 15] on interstate trains while within its borders, it is well settled, as we have seen, that it can do nothing which will directly burden or impede the interstate traffic of the carrier, or impair the usefulness of its facilities for such traffic. When the subject is national in its character and admits and requires uniformity of regulation affecting alike all the states, the power is in its nature exclusive, and the state cannot act. The failure of Congress to act as to matters of national character is, as a rule, equivalent to a declaration that they shall be free from regulation or restriction by any statutory enactment, and it is well settled that interstate commerce is national in its character. Applying these general rules to the particular facts in this case, and bearing in mind the application of the expressions used in

Hall v. *DeCuir* to cases involving questions more or less analogous to that before us, we are forced to the conclusion that this statute cannot be sustained to the extent of making interstate passengers amenable to its provisions. When a passenger enters a car in New York under a contract with a carrier to be carried through to the District of Columbia, if when he reaches the Maryland line, he must leave that car, and go into another, regardless of the weather, the hour of the day or the night, or the condition of his health, it certainly would, in many instances, be a great inconvenience and possible hardship. It might be that he was the only person of his color on the train, and no other would get on in the State of Maryland, but he, if the law is valid against him, must, as soon as he reaches the state line, leave the car he started in, and go into another, which must be furnished for him, or subject himself to a criminal punishment."

and that, therefore, the statute could not be sustained under the police power. The court added that it was convinced that if the Supreme Court of the United States were called to pass upon the precise question, it would hold such statute invalid as applicable to interstate passengers.

In *Anderson* v. *Louisville & N. R. Co.*, *supra*, plaintiff and his wife were forced, by the defendant, to occupy seats in the Negro coach upon two separate trips. Upon the first, they were traveling as first class passengers from Evansville, Indiana, to Madisonville, Kentucky, and were required to move into said coach when the train reached Kentucky. On the second trip, the trip was wholly within Kentucky. Suit was then brought against defendant wherein the court considered the constitutionality of the 1892 Kentucky statute calling for separate but equal facili- [fol. 16] ties for the races. It was held that the statute was invalid as its language was broad enough to extend its application to interstate as well as intrastate passengers and therefore constituted it a regulation of interstate commerce. Defendant's demurrer was accordingly overruled.

In *Carney* v. *Spencer*, *supra*, plaintiff, a Negro, bought a ticket for passage from New York to Knoxville, Tennessee. At or near the Tennessee line he was moved into the coach provided for Negro passengers pursuant to the provisions of the Tennessee separate coach law. This suit was for damages, being brought in a New York Court because de-

fendant company was in the hands of a receiver and the court of receivership had granted plaintiff leave to sue in New York. It was held that plaintiff was entitled to judgment, on the ground that the Tennessee statute, as applied to an interstate passenger, was unconstitutional.

In *Thompkins* v. *Missouri, K. & T. Ry. Co., supra*, plaintiff, a Negro, sued for damages arising from his ejection from a Pullman car in Oklahoma, and for his arrest, conviction and fine for disturbing the peace. He was a passenger from Kansas City, Missouri to McAlester, Oklahoma. The Oklahoma statute was in question, one of defendant's positions being that it acted in conformity therewith. It was held that, as plaintiff was an interstate passenger, the statute was irrelevant.

In *Brown* v. *Memphis & C. R. Co., supra*, plaintiff, a Negro, sued for her exclusion from the ladies' car on one of defendant's trains upon her refusal to take a seat in the smoking car. There was at the time a statute of Tennessee providing that all common law remedies for the exclusion of any person from public means of transportation were thereby abrogated, that no carrier should be bound to carry any person whom he should for any reason choose not to carry, that no right of action should exist in favor of any person so refused admission, and that the right of carriers as to the exclusion of persons from their means of transportation should be as perfect as that of any private person. Following *Hall* v. *DeCuir*, it was held that so far as this statute purported to apply to interstate passengers, it was unconstitutional, being a regulation of interstate commerce.

So long as uniform regulation remain a *sine qua non* of the growth of the interstate carrier, the orderly conduct of its business, and the protection of the national interest therein, the recognition of a power in the states to determine whether interstate traffic while within their boundaries [fol. 17] shall be subject to a legislative policy of segregation or non-segregation of the races is conducive only to a result which the commerce clause was intended to forbid. While such legislation purports merely to control the carrier while within the territorial limits of the state, it necessarily influences its conduct in the management of its business throughout its entire route, since all passengers, interstate as well as intrastate, are affected by the carrier's dis-

position of its passengers pursuant thereto. Since each state could legislate in its own interest without regard for the consequences, and the various enactments could differ in provision, a compliance with all would produce the kind of confusion and embarrassment in the midst of which commerce could not flourish. When it is perceived that the recognition of the validity of a state law requiring the segregation of the races would in turn necessitate the same recognition of a non-segregation statute, there is no limit to the carrier's burden.

Such injurious consequences are already at hand. An examination of the law of the six jurisdictions contiguous to Virginia demonstrates the diversity of policy in our immediate section of the nation. Two such jurisdictions (West Virginia and the District of Columbia) do not attempt to segregate the races in either interstate or intrastate commerce. Three others (Maryland, North Carolina and Kentucky) have, as appears from the second part of this argument, construed their laws as limited in operation to intrastate traffic. Only one (Tennessee) has held its law applicable to the interstate passenger. Not a single state on the Atlantic seaboard from Maine to Florida has decided that its state policy in this regard can control any other than its domestic commerce. Situated as it is in the path of a channel of interstate transportation, Virginia should not provide a stumbling block.

II

The Statute Upon Which This Prosecution Was Based Should Be Construed As Limited in Its Operation to Passengers in Intrastate Commerce, and Therefore As Inapplicable to Defendant

If limited in operation to intrastate passengers, the statute upon which this prosecution was based is valid, insofar as the commerce clause of the Federal Constitution is concerned. Defendant's position in this connection is that as a matter of statutory construction rather than constitu- [fol. 18] tional limitation, this statute did not apply to her. Well established canons compel this conclusion.

The Applicable Rules of Construction

Where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute

would be unconstitutional and by the other it would be valid, the Court should adopt the construction which will uphold it and bring it into harmony with the Constitution, if its language will permit.

Miller v. *Commonwealth*, 172 Va. 639, 2 S. E. 2d 343 (1939);

Hannabass v. *Ryan*, 164 Va. 519; 180 S. E. 416 (1935);

Commonwealth v. *Carter*, 126 Va. 469, 102 S. E. 58 (1920);

Commonwealth v. *Armour & Co.*, 118 Va. 242, 87 S. E. 610 (1916).

The duty of the court to so construe a statute as to save its constitutionality when it is reasonably susceptible of two constructions includes the duty of adopting a construction that will not subject it to a succession of doubts as to its constitutionality. It is well settled that a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also serious doubt upon that score.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352 (1937);

Crowell v. *Benson*, 285 U. S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932);

South Utah Mines & Smelters v. *Beaver County*, 262 U. S. 325, 43 S. Ct. 577, 67 L. Ed. 1004 (1923);

Ann Arbor R. Co. v. *United States*, 281 U. S. 658, 50 S. Ct. 444, 74 L. Ed. 1098 (1930);

Re Keenan, 310 Mass. 166, 37 N. E. 2d 516, 137 A. L. R. 766 (1941).

In order to uphold the statute, the courts may restrict its application to the legitimate field of legislation, unless the act indicates a different intention on the part of its framers. A statute should not be given a broad construction if its validity can be saved by a narrower one.

South Utah Mines and Smelters v. *Beaver County*, *supra*; [fol. 19] *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 508, 58 S. Ct. 295, 82 L. Ed. 392 (1938);

United States v. *Walters*, 263 U. S. 15, 44 S. Ct. 10, 68 L. Ed. 137 (1923);

Schoberg v. *United States* (C. C. A., 6th), 264 F. 1 (1920);

Mintz v. *Baldwin* (D. C., N. Y.), 2 F. Supp. 700 (1933).

The Construction of Carrier Racial Segregation Laws

In the vast majority of cases wherein there has arisen a question as to the validity of a state carrier racial segregation law upon the ground that it amounted to an unconstitutional interference with interstate commerce, the law has been construed as limited in its operation to passengers in intrastate commerce.

McCabe v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 218 U. S. 71, 30 S. Ct. 667, 54 L. Ed. 936 (1910);

Chesapeake & O. Ry. Co. v. *Kentucky*, 179 U. S. 388, 21 S. Ct. 101, 45 L. Ed. 244 (1900);

Louisville, N. O. & T. Ry. Co. v. *Mississippi*, 133 U. S. 587, 10 S. Ct. 348, 33 L. Ed. 784 (1890);

Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 290, 289 F. 598, 30 A. L. R. 50 (1923);

South Covington & C. Ry. Co. v. *Commonwealth*, 181 Ky. 449, 205 S. W. 603 (1918);

McCabe v. *Atchison, T. & S. F. Ry. Co.* (C. C. A., 8th), 186 F. 966 (1911);

State v. *Galveston, H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227 (1916);

O'Leary v. *Illinois Central R. Co.*, 110 Miss. 46, 69 S. 713 (1915);

State v. *Jenkins*, 124 Md. 376, 92 A. 773 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 125 Ky. 299, 101 S. W. 386 (1907);

Southern Kansas Ry. Co. v. *State*, 44 Tex. Civ. App. 218, 99 S. W. 166 (1906);

Hart v. *State*, 100 Md. 596, 60 A. 457 (1905);

Ohio Valley Ry.'s Receiver v. *Lander*, 104 Ky. 431, 47 S. W. 344 (1898);

Louisville, N. O. & T. Ry. Co. v. *State*, 66 Miss. 662, 6 S. 203 (1889);

State, ex rel., Abbott v. *Hicks*, 44 La. Ann. 770, 11 S. 74 (1892).

[fol. 20] Thus, in *McCabe v. Atchison, T. & S. F. Ry. Co., supra*, a case involving the 1907 Oklahoma law which required separate coaches for the races, and providing penalties for its violation, five Negroes, citizens of Oklahoma, brought suit in equity before the law went into effect against five railroad companies to restrain its enforcement upon the ground, *inter alia*, that it was repugnant to the commerce clause. Of course, the highest court of Oklahoma had not construed the act. There was a demurrer to the bill which the trial court sustained. Upon appeal to the Circuit Court of Appeals for the Eighth Circuit, the judgment below was affirmed upon the ground that the act, in the absence of a different construction by the state court, must be construed as applying to intrastate transportation exclusively, and therefore as not contravening the commerce clause. The Circuit Court of Appeals said on this score:

"The question, then, is whether that statute, when properly construed, applies to interstate transportation, or whether it is limited in its application to that transportation which has its origin and ending within the confines of the state. No provision is found in the act indicating in any express terms that it was intended to apply to interstate commerce. All its provisions concerning the subject of legislation are general. Thus Section 1 provides that 'every railway company * * * doing business in this state, * * * shall provide separate coaches,' etc. Sections 2 and 6 make it unlawful 'for any person' to occupy any waiting room or ride in any coach not designated for the race to which he belongs. While, therefore, the language of the act, literally construed, is comprehensive enough to include railroads doing interstate business, and include passengers while making interstate trips, it neither in express terms nor by any implication other than that involved in the general language employed, manifests any intention to invade the exclusive domain of congressional legislation on the subject of interstate commerce. Local transportation, or that which is wholly within the state only, being within the competency of the state legislature, would naturally be presumed to have been alone contemplated in the law enacted by it. The constitutional inhibition against a state legislating concerning interstate com-

merce, and the uniform decisions of courts of high and controlling authority, emphasizing and enforcing that inhibition, without doubt, were actually as well as constructively known to the members of the legislature of Oklahoma. It is unreasonable to suppose they intended to legislate upon a subject known by them to be beyond their [fol. 21] power, and upon which an attempt to legislate might imperil the validity of provisions well within their power. Any other view would imply insubordination and recklessness, which cannot be imputed to a sovereign state."

Upon appeal to the Supreme Court of the United States, the same conclusion was reached and the rule of interpretation applied by the Circuit Court of Appeals confirmed.

Likewise, in *Chesapeake & O. Ry. Co.* v. *Kentucky, supra*, there was a review of the conviction of the railroad company, an interstate carrier, under the 1892 statute which provided that all railroads in the state must furnish separate but equal accommodations for the races. Defendant, in the trial court, had contended that the statute was unconstitutional as a regulation of interstate commerce. Its demurrer predicated upon this ground was overruled. The Court of Appeals of Kentucky construed the act as applying only to intrastate passengers, and affirmed the conviction, which the Supreme Court of the United States likewise affirmed. Said the latter Court, through Mr. Justice Brown:

"Of course this law is operative only within the state. • • • The real question is whether a proper construction of the act confines its operation to passengers whose journeys commence and end within the boundaries of the state or whether a reasonable interpretation of the act requires colored passengers to be assigned to separate coaches when traveling from and to points in other states. • • •

"This ruling (of the Court of Appeals of Kentucky) effectually disposes of the argument that the act must be construed to regulate the travel or transportation on the railroads of *all* white and colored passengers, while they are in the state without reference to where their journey commences and ends, and of the further contention that the policy would not have been adopted if the act had been con-

fined to that portion of the journey which commenced and ended within the state lines.

"Indeed, we are by no means satisfied that the Court of Appeals did not give the correct construction to this statute in limiting its operation to domestic commerce. It is scarcely courteous to impute to a legislature the enactment of a law which it knew to be unconstitutional, and if it were well settled that a separate coach law was unconstitutional, as applied to interstate commerce, the law applying on its face to *all* passengers should be limited to such as the legislature was competent to deal with. The Court of Appeals has found this to be the intention of the General Assembly in [fol. 22] this case, or as least, that if such were not its intention, the law may be supported as applying alone to domestic commerce. In thus holding the act to be severable, it is laying down a principle of construction from which there is no appeal."

There is ample room for this Court to avoid all constitutional difficulties with respect to the statute in question. It is not in terms applicable to interstate passengers. It has never been construed in this respect by this Court. It is not necessary to impute a frustrated motive to the legislature when settled principles require the limitation of its operation in order to remove all doubt as to its validity.

Conclusion

Your petitioner submits that for the reasons set forth in this her petition, which is hereby adopted as her opening brief, the judgment of the trial court is erroneous, and should be set aside, and prays that a writ of error may be granted to said judgment, and a *supersedeas* thereto awarded, and that the same may be reviewed and reversed.

Counsel for the petitioner hereby request that they be permitted to argue orally the matter contained in this petition upon the application for a writ of error and *supersedeas*, and certify that a copy hereof has been forwarded by registered mail to the Honorable Lewis Jones, Commonwealth's Attorney for Middlesex County, Virginia, who was Commonwealth's Attorney when this case was tried and who prosecuted the same on behalf of the Commonwealth. Said copy was mailed on the 5th day of February, 1945. The

original hereof is filed in the office of the Clerk of this court in Richmond, Virginia.

Irene Morgan, Petitioner, By Spottswood W. Robinson, III, Of Counsel.

Hill, Martin & Robinson, Consolidated Bank Building, Richmond 19, Virginia, Counsel for Petitioner.

[fol. 23] Certificate

I, Martin A. Martin, an attorney practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion the judgment complained of in the foregoing petition is erroneous and should be reviewed.

Martin A. Martin, Consoliadted Bank Building, Richmond 19, Virginia.

Received February 5, 1945.

M. B. Watts, Clerk.

March 6, 1945. Writ of error and *supersedeas* awarded by the Court. Bond $100.

M. B. W.

In Circuit Court of Middlesex County

Warrant—Filed July 22, 1944

State of Virginia,
County of Middlesex, to-wit:

To any Sheriff or Police Officer:

Whereas R. P. Kelly has this day made complaint and information on oath before me, G. C. Bourne, Justice of the Peace of the said County, that Irene Morgan in said county did on the 16th day of July, 1944: Unlawfully Refuse to move back on the Greyhound Bus in the section for colored people,

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Trial Justice of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to

[fol. 24] summon —— —— color —— Address —— as witnesses.

Given under my hand and seal, this 16th day of July, 1944.

G. C. Bourne, J. P. (Seal.)

Reverse Side of Said Warrant:

Docket No. A 1450, Court No. 330 File 40

Commonwealth

v.

Irene Morgan (c). Hayes Store, Va.

Warrant of Arrest

Executed this, the 16 day of July, 1944, by arresting Irene Morgan.

R. B. Segar, Sheriff.

Upon the examination of the within charge, I find the accused

July 18, 1944.

Upon a plea of not guilty to the within charge, and upon examination of witnesses, I find the accused guilty as charged and fix *his* punishment at a fine of $10.00 and —— days in jail and costs. Appeal noted. Bail set at $500.00. Let to Bail.

Catesby G. Jones, Trial Justice.

Fine	$10.00
Costs	5.25
Total	$15.25

Filed July 22, 1944.

C. W. Eastman, Clerk.

State of Virginia,
County of Middlesex, to-wit:

I, G. C. Bourne a justice of the peace in and for the [fol. 25] County aforesaid, State of Virginia, do certify that Mrs. Irene Morgan and Mrs. Ethel Amos, Sr., as her surety, have this day each acknowledged themselves in-

debted to the Commonwealth of Virginia in the sum of Five Hundred Dollars ($500.00), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to be rendered, yet upon this condition: That the said Irene Morgan, shall appear before the Trial Justice Court of Middlesex County, on the 18th day of July, 1944, at 10 A. M., at Saluda, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which *he* is charged, and shall not depart thence without the leave of said Court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that the said —— —— shall keep the peace and be of good behavior for a period of — days from the date hereof.

Given under my hand, this 16th day of July, 1944.

G. C. Bourne, J. P.

Costs—T. J. Court

Warrant	$1.00
Trial	2.00
Arrest	1.00

In Circuit Court of Middlesex County

[Title omitted].

Appeal from Trial Justice: Misdemeanor: Violation of Section 4097dd of 1942 Code

[Title omitted]

[fol. 26] Appeal from Trial Justice: Misdemeanor: Resisting Arrest

Journal Entry of Hearing—September 25, 1944

This day came the Attorney for the Commonwealth and the accused came to the bar with her counsel, and by consent of both parties these two cases are to be heard on the evidence heard in both cases together and by consent of all

parties trial by jury was waived in both cases, and the defendant agreed to submit her case to the Judge of this Court for trial and disposition according to law, and motion was made by the Attorney for the Commonwealth to amend the warrant as follows: State of Virginia, County of Middlesex, to-wit: To Any Sheriff or Police Officer: Whereas R. P. Kelly, operator of the Greyhound Bus has this day made complaint and information on oath before me, G. C. Bourne, Justice of the Peace of the said County, that Irene Morgan in the said County did on the 16 day of July, 1944, Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of Section 5 of the Act, Michie Code of 1942, section 4097dd, which motion was granted by the Court and to which ruling the defendant excepted.

After the evidence for the Commonwealth was in, the defendant moved to strike out all the evidence of the Commonwealth and to dismiss the case wherein she was charged of a violation of Section 4097dd of the Code, upon the grounds that the defendant, Irene Morgan, was shown by the evidence for the Commonwealth to be a passenger in the interstate commerce upon an interstate public carrier, towit, the Greyhound Bus, that she was a through passenger from Hayes Store, Gloucester County, Virginia, to Baltimore, Maryland, that Section 4097dd of the Code of Virginia could not constitutionally apply to interstate passengers and that its application to such passengers would violate Article I, Section 8 of the Constitution of the United States, and that said Section 4097dd, should, under settled rules of construction, be construed as inapplicable in operation to passengers in intrastate commerce; and also moved to strike out all the evidence of the Commonwealth and to dismiss the case wherein she was charged with resisting an officer of the law in the discharge of his duty, upon the same grounds previously advanced in support of her motion to strike all the evidence of the Commonwealth and to dismiss the case wherein she was charged with a violation of Section 4097dd of the Code, and upon the additional [fol. 27] grounds that the arrest of her person sought to be made in this case was illegal, and that her conduct was therefore within her privilege to resist an unlawful arrest.

These Motions the Court overruled, to which action of the Court the defendant excepted.

After all the evidence for the Commonwealth and the defendant respectively, was in, and both the Commonwealth and the defendant had rested, defendant renewed her motion to strike out all the evidence for the Commonwealth in each of the cases aforesaid, upon the same grounds respectively, previously advanced in support of the motion to strike made at the conclusion of the Commonwealth's case-in-chief, and upon the additional ground that the conviction of the defendant in either case would constitute a violation of her rights under the Fourteenth Amendment to the Constitution of the United States. These motions the Court overruled, to which action of the Court the defendant excepted.

And the Judge of this Court reserves his decision in each case until October 18th, 1944.

IN CIRCUIT COURT OF MIDDLESEX COUNTY

[Title omitted]

JUDGMENT—October 18, 1944

This day came the Attorney for the Commonwealth and the accused, Irene Morgan came to the bar with her counsels, Spottswood Robinson, III, and Linwood Smith, and the Court having maturely considered of its judgment in this case doth find the defendant Guilty: Thereupon the defendant moved the Court to set aside its findings of facts and grant the defendant a new trial upon the grounds that the said findings of fact were contrary to the law and the evidence and assigned in support of said motion the following reasons:

(1) That the law upon which the prosecution was based could not be constitutionally applied to the defendant, an interstate passenger, and that its application to a passenger in interstate commerce was a violation of Article I, Section 8, of the Constitution of the United States;

[fol. 28] (2) That under settled rules of construction said law could not be construed to apply to a passenger in

interstate commerce, and that it must be construed as limited in its application to intrastate passengers;

(3) That the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States; and that (4) said findings of facts were contrary to the evidence, and lacking in evidence sufficient to support them. This motion the Court overruled, to which action of the Court the defendant excepted.

Defendant moved the Court to grant her a new trial, upon the ground that her conviction was erroneous under the law and contrary to the evidence, and assigned as reasons in support of this motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the defendant a new trial. This motion the Court overruled, to which action of the Court the defendant excepted.

Defendant moved the Court to arrest the judgment in this case upon the ground of errors of law and fact apparent upon the face of the record in the case, and assigned as reasons in support of this motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the defendant a new trial. This motion the Court overruled, to which action of the Court the defendant excepted.

The Court having found the said Irene Morgan guilty as charged in said warrant doth sentence the said Irene Morgan to pay a fine to the use of the Commonwealth of Ten Dollars and the costs in this behalf expended.

Whereupon, the defendant indicated to the Court her intention of applying to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of the Court in this case, and moved the Court to grant a suspension of the execution of the judgment entered in this case. Thereupon, the Court granted said motion and granted a suspension of the execution of the judgment for a period of sixty days from date within which period counsel for the defendant might present to the Court bills of exception in said case, and granted to defendant leave to apply to the Court for additional time within which to present to, and have acted upon by, the Supreme Court of Appeals of Virginia, a petition for writ of error to the judgment in this case.

[fol. 29] In Circuit Court of Middlesex County

[Title omitted]

Order Suspending Execution of Judgment—Filed December 7, 1944

This day came the defendent by her counsel and moved the Judge rendering the judgment in this case to further suspend the execution of the judgment and sentence heretofore rendered and imposed in this case on the 18th day of October, 1944, in order to permit the defendant to present a petition for a writ of error to said judgment to the Supreme Court of Appeals of Virginia, and to have the same acted upon by said Court.

Whereupon, it appearing that the defendant has applied to said Judge, who is the Judge of this Court, for the signing and sealing of her several Bills of Exception, the same having been this day signed, sealed, enrolled and saved to her, and made a part of the record in this case, within sixty days of the final judgment in this case, and that the defendant desires and intends to present to the Supreme Court of Appeals of Virginia a petition for a writ of error to the judgment herein. It is hereby adjudged and ordered that execution of the said judgment and sentence be and the same is hereby suspended until the 17th day of February, 1945, and thereafter until such petition is acted upon by the Supreme Court of Appeals of Virginia if such petition is actually filed on or before the 17th day of February, 1945.

In the Circuit Court of Middlesex County

Case 330

Commonwealth of Virginia

v.

Irene Morgan

Appeal from Trial Justice, Violation of Section 4097dd of 1942 Code

[fol. 30] Bill of Exception No. 1—Filed December 7, 1944

Be it remembered that on the trial of this case the following evidence on behalf of the Commonwealth and of the

defendant, respectively, as herginafter denoted, is all of the evidence that was introduced:

Witnesseth for the Commonwealth.

R. P. Kelly.

Direct examination:

R. P. Kelly testified that he lives in Norfolk, Virginia; that he is an employee of the Greyhound Lines, and has been employed by said company for the last six years; that on the 16th day of July, 1944, he was engaged in his duties and was driving, and was in charge and control of, a Greyhound bus from Norfolk, Virginia, to Baltimore, Maryland; that Irené Morgan, the defendant, was a passenger on his bus on July 16, 1944; that the defendant is a colored person; that she boarded the bus at Hayes Store, in Gloucester County, Virginia; that when she boarded the bus at Hayes Store the bus was crowded; that all seats were occupied and both white and colored passengers were standing in the aisle; that after the arrival of the bus in Saluda, at about 11 A. M. on that day, and the discharge of the white and colored passengers destined there, there were six white passengers standing, but no colored passengers standing; that at this time he perceived the defendant and another colored woman, the latter carrying an infant, seated in the second seat forward of the long seat in the extreme rear of the bus, the seat in which they were so seated being, in a view toward the rear of the bus, on the left side of the aisle; that at this time he also saw two vacant seats on the long rear seat, which long rear seat was partly occupied by colored passengers; that he requested the defendant and her seatmate to move back into the two vacant seats on the long rear seat; that the defendant's seatmate started to change her seat, but the defendant pulled her back down into the seat; that the defendant refused to change her seat as requested; that he, the witness, thereupon explained to her the bus rules and regulations as to seating colored and white passengers on busses, and informed her that he was required to seat white pas- [fol. 31] sengers from the front of the bus backward and colored passengers from the rear of the bus forward.

At this point the witness produced a booklet in evidence which he identified as the Manual of Rules for Bus Opera-

tors of the Greyhound Lines, and testified that said Manual contained, on pages 34 and 35 thereof, a rule of said company. Thereupon, the Commonwealth introduced into evidence the booklet containing the rule aforesaid, the same being marked as Exhibit "A", which rule read as follows:

EXHIBIT "A"

"T-22 Rights Reserved: This company reserves the right to refuse transportation to any and all persons for the following reasons:

"(c) This company reserves full control and discretion as to the seating of passengers and the right to change such seating at any time during the trip except on divisions or runs where specific seat reservations are made, in which case, passengers shall retain the seats assigned them unless same be contrary to any laws or governmental regulations."

The witness further testified that to his request that the defendant so move her seat, the defendant replied that she knew the rules and regulations of the bus company and that the front one-half of the bus was for white passengers and the rear one-half of the bus was for colored passengers; that after the defendant refused to change her seat, he left the bus and secured from the Justice of the Peace at Saluda a warrant charging her with violating the Virginia segregation law; that Sheriff R. B. Segar boarded the bus with the warrant and asked the defendant to change her seat and attempted to read the warrant to her, but she knocked the warrant out of the Sheriff's hand; that the woman seated besides the defendant moved, but the defendant refused to move, whereupon the sheriff and his deputy, C. M. Bristow, took her off the bus.

The witness further testified that when the bus arrived in Saluda, after discharging passengers there, there were three colored passengers seated on the long rear seat and two vacant seats thereon; that all other seats on the bus were occupied; that six white passengers, but no colored passengers were standing.

[fol. 32] Cross-examination:

On cross examination R. P. Kelly testified that he had been employed by the Greyhound Lines for six years; that he was the driver of and in charge of the bus upon which

the incidents testified occurred; that he was personally driving and operating the said bus from the City of Norfolk, Virginia, to the City of Baltimore, Maryland; that the said bus made and was making a continuous or through trip from Norfolk to Baltimore, traveling by way of and through the City of Washington, District of Columbia.

He testified further that the Greyhound Lines is regularly engaged in the business of transporting passengers for hire from points within the State of Virginia to various points throughout the United States, including the City of Baltimore, Maryland, and was so engaged on the 16th day of July, 1944; that passengers traveling to points outside the State of Virginia are and were, on the date aforesaid, regularly taken aboard its busses in Gloucester County, Virginia, including Hayes Store, and transported therein to points outside the State of Virginia.

At this point the witness was shown a ticket stub and identification check, and requested to identify the same, whereupon the witness testified that the same was the stub of a ticket issued by the Greyhound Lines on July 15, 1944, at its ticket office at Hayes Store, in Gloucester County, Virginia; that the ticket which had been attached to said stub entitled the holder thereof to transportation in a Greyhound bus from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland; that the holder of said ticket was entitled to transportation from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland, on the 16th day of July, 1944, in the bus which he drove and operated; that he could not identify the stub as the stub of the ticket which had been surrendered to him by the defendant when she boarded the bus and which he had accepted, but that said stub could be the stub of the ticket of the defendant. Thereupon, the defendant introduced into evidence the stub aforesaid, the same being marked as Exhibit "B", which stub contained the following words, figures and marks on the front side thereof:

[fol. 33] EXHIBIT "B"

A 65748 K

Issued by
Richmond Greyhound Lines, Inc.
Richmond, Va.

In selling this ticket for transportation over the lines of another carrier, the issuing carrier acts as agent only and assumes no responsibility beyond its own line.

Baggage may be checked in accordance with tariff regulations and limitations. Unchecked baggage, parcels, or other effects are carried at passenger's risk.

Void After

L. H. RISTOW,
General Traffic Manager.

Identification Check

Not good for passage or refund

Last Coupon

Reads to Baltimore, Md.

This check should be retained by the passenger until destination is reached subject to inspection by the driver at any time, and is to be surrendered to the driver when the passenger's journey is completed.

Printed in U. S. A.

Exhibit "B", the stub aforesaid, contained the following words, figures and marks on the reverse side thereof:

Greyhound July 15, 1944, Hayes Store, Va.

The witness was then shown a green paper, and requested to identify the same whereupon the witness testified that the same was a transfer or token of the Greyhound Lines; that he recognized the same from the holes punched therein; that after the defendant was arrested and moved from the bus in Saluda, he, the witness, prepared the same in order that the defendant might employ it for transportation from Saluda, Virginia, to Baltimore, Maryland, or for [fol. 34] a cash refund of the fare paid for that portion

of her trip between the said two points; that he punched holes in it at the appropriate places to show Saluda, Virginia, as the point of beginning, and Baltimore, Maryland, as the point of ending, of the incompleted portion of her trip; that he issued the same without the previous knowledge or request of the defendant.

Thereupon, the defendant introduced into evidence the transfer aforesaid, the same being marked as Exhibit "C", which transfer contained no words or figures on the reverse side thereof, but contained the following words, figures and marks on the front side thereof, and also contained three punch marks, one at each of the three places indicated by the figure "X":

EXHIBIT "C".

Richmond Greyhound Lines, Inc.

Form Tr. - 2 NO. 27768

Foreign ( ) R. G. (X)

Valid for Transportation
from or to Stations Punched

Alexandria, Va.	( )	Richmond, Va.	( )
Bays Fork, Va.	( )	Suffolk, Va.	( )
Ft. Belvoir, Va.	( )	T. B. Jct. Md.	( )
Ft. Eustis, Va.	( )	Tappahan'k, Va.	( )
Fredericksburg, Va.	( )	Triangle, Va.	( )
La Plata, Md.	( )	Waldorf, Md.	( )
Lee Hall, Va.	( )	Warsaw, Va.	( )
Newport News, Va.	( )	Washington, D. C.	( )
Norfolk, Va.	( )	Williamsburg, Va.	( )
Petersburg, Va.	( )	Balto, Md.	(X)
Portsmouth, Va.	( )	Saluda, Va.	(X)

Subject to Tariff Limitations of
Ticket for which Transfer is Issued

The witness further testified that he would not have prepared or issued a transfer showing Saluda, Virginia, [fol. 35] as the point of beginning and Baltimore, Maryland, as the point of ending, unless the defendant had held a ticket entitling her to transportation on his bus to Balti-

more, Maryland; that defendant held a ticket entitling her to transportation to Baltimore, Maryland; that he knew that all of the colored passengers remaining on the bus in Saluda, after those destined to Saluda had been discharged, from the bus in Saluda, held tickets to and were traveling to Baltimore, Maryland, and that defendant held a ticket to and was traveling to Baltimore, Maryland.

The witness testified further that the bus arrived in Saluda at about 11 A. M.; that after its arrival there, and after the passengers destined to Saluda had left the bus, there were three colored passengers seated on the long seat in the extreme rear of the bus; that there were two vacant seats on the said rear seat; that said long rear seat is designed to accommodate a maximum of five passengers; that the defendant and the other colored woman sitting beside her occupied the seat second forward of the long rear seat on the left side of the aisle; that all other seats in the bus, except the two vacant on the long rear seat, were occupied; that all colored passengers were seated; and that six white passengers were standing.

He testified further that he told the defendant and her seatmate to move from the seat they then occupied into the long rear seat; that he told them that under the rules of the bus company they would have to sit in the long rear seat, and attempted to explain to her the rules and regulations of the bus company; whereupon the defendant said that she knew as much about the bus rules as he did; that he also told them that he was required to seat colored passengers from the rear of the bus forward, and white passengers from the front of the bus backward; that under the rules of the bus company all colored passengers were required to be seated from the rear of the bus forward, and that all white passengers were required to be seated from the front of the bus backward, and that the general custom and policy pursued by his company upon busses traveling in or through the State of Virginia was to assign separate seats to white and colored passengers in the manner stated. He testified further that he never made an effort to move any other passenger or passengers on the bus except the defendant and her seatmate; that he never did anything more than request that they move to the two vacant seats [fol. 36] on the long rear seat, and that his direction in this regard was made solely to the defendant and her seatmate; that neither he nor anyone else on the bus had any

difficulties whatsoever with the defendant until he sought to procure her removal from the seat that she occupied.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that he did not remember whether she was the person who was seated beside the defendant or not.

The witness denied that he was seeking the removal of the defendant and her seatmate in order to obtain seats for a white couple which boarded the bus in Saluda; he denied that he at any time stated that colored passengers would be seated only after all white passengers were seated; he testified that after the defendant refused to change her seat, he left the bus and swore out the warrant for her arrest upon the charge of refusing to move her seat.

C. M. Bristow.

Direct examination:

C. M. Bristow testified that he is deputy sheriff of Middlesex County; that he accompanied Sheriff R. B. Segar to the Greyhound bus on July 16, '944, at about 11 o'clock A. M., to execute the warrant sworn out against defendant by the bus driver; that when they boarded the bus no colored passengers were standing; that white passengers were standing; that he saw the defendant and another colored woman seated in the second seat forward from the long rear seat; that there were two vacant seats on the long rear seat; that when Sheriff R. B. Segar was reading the warrant of arrest to the defendant, she snatched the warrant out of his hand and threw it behind her seat; that the sheriff requested the defendant and her seatmate to move from the seat they occupied; that the defendant's seatmate got up and took one of the vacant seats on the long rear seat; that the defendant refused to move from the seat; that when they tried to arrest the defendant and take her off the bus, the defendant struck at the witness, but did not hit him, and kicked Sheriff Mr. Segar three times on his leg; that the defendant stated that she would neither move her seat nor get off the bus; that he and the [fol. 37] sheriff took the defendant from the bus and put her in the jail at Saluda; that R. P. Kelly, the driver and

operator of the bus, had obtained the issuance of the warrant, and had pointed the defendant out to the sheriff and him.

Cross-examination:

On cross examination C. M. Bristow testified that he is the deputy sheriff of Middlesex County, Virginia; that he has considerable experience in arresting persons charged with crime; that he had assisted Sheriff Segar on nearly every arrest made during the time he has been deputy sheriff; that the defendant was seated on the second seat forward of the long rear seat in the rear of the bus; that there were two vacant seat spaces on the long rear seat; that the long rear seat was partly occupied by colored passengers; that several white passengers were standing in the aisle; that the defendant was in all respects orderly and well-behaved and caused no trouble whatsoever until efforts were commenced to remove her from the seat she occupied.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that — did not remember whether she was the person who was seated beside the defendant or not.

R. B. Segar.

Direct examination.

R. B. Segar testified that he is the Sheriff of Middlesex County, Virginia, and has been sheriff of the County for forty years; that on July 16, 1944, at about 11 o'clock A. M., when the Greyhound bus operated by R. P. Kelly stopped in Saluda, Virginia, Kelly swore out and obtained a warrant for the arrest of the defendant for refusing to change her seat as required by Virginia law; that he, accompanied by C. M. Bristow, his deputy, went on the bus to execute the warrant; that when he attempted to read the warrant to the defendant, she snatched it from his hand and threw it behind her seat; that he requested the defendant and her seatmate to move; that the defendant refused to so move, and kicked him twice on his leg; that the colored woman seated beside the defendant got up out

[fol. 38] of the seat when he requested her to move; that the defendant stated that she would not move her seat, and that she would not get off the bus; that he and C. M. Bristow took the defendant from the bus and put her in jail in Saluda; that his (the witness') back was to the rear of the bus, and that he could not see whether there were any vacant seats in the rear of the bus or not; that when he so boarded the bus his badge as Sheriff of Middlesex County, was pinned on his shirt, and that he wore no coat.

Cross-examination:

On cross examination *Sheriff R. B. Segar testified* that he had had considerable experience in arresting persons charged with crime; that he did not know whether there were any vacant seats on the long rear seat or not, but that he entered the bus to execute the warrant of arrest; that he did not look any further to the rear of the bus than the seat which the defendant and her seatmate occupied; and was not in a position to say if there were any vacant seats on the bus; that he thought that the defendant and her seatmate sat in the third seat forward of the long rear seat, rather than in the second seat forward of the long rear seat; that the defendant was sitting quietly in the seat when he boarded the bus and approached her, and that so far as he knew she was well-behaved and caused no trouble whatsoever until he attempted to read the warrant of arrest to her and move her out of her seat; that the warrant was procured and sworn out by the bus driver.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that he did not think she was the person who was seated beside the defendant or not.

Upon this testimony the Commonwealth rested its case.

Thereupon the defendant moved the Court to strike out all the evidence of the Commonwealth, and to dismiss the case wherein she was charged with a violation of Section 4097dd of the Code of Virginia, as fully set forth in Bill of Exception No. 2, to which reference is hereby made; *to which reference is hereby made,* and upon the grounds

and for the reasons therein set forth. This motion the Court overruled, to which action of the Court the defend- [fol. 39] ant excepted, and thereupon offered the following evidence in her behalf.

Evidence for the Defendant.

Irene Morgan.

Direct examination:

Irene Morgan testified that she is the defendant in this case; that she is a Negro or colored person; that she resides both in Gloucester County, Virginia, and in Baltimore, Maryland; that on the 15th day of July, 1944, she purchased from the regular agent of the Greyhound Lines a through ticket for transportation from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland; that on the 16th day of July, 1944, she boarded a Greyhound bus, which was operated and driven by R. P. Kelly, at Hayes Store, and surrendered her ticket to him, for transportation to Baltimore; that her ticket was accepted by the bus driver; that she had no intention of leaving the bus prior to its arrival in Baltimore.

At this point the defendant was presented with the ticket stub and identification check, marked as Exhibit "B", and set forth hereinbefore in this Bill of Exception, whereupon she testified that the same was the stub of the ticket which she had purchased on July 15, 1944, and which she had surrendered to the operator of the bus. The defendant was then presented with the green paper previously identified by the witness R. P. Kelly as the transfer or token which he issued, marked as Exhibit "C", and set forth hereinbefore in this Bill of Exception, whereupon the defendant testified that said paper was issued to her and given to her by the said R. P. Kelly after she, the defendant, had been removed from the bus in Saluda.

The defendant further testified that at the time she boarded the bus at Hayes Store, there were four or five colored persons already seated on the long seat in the extreme rear of the bus, that the seats on each side of the aisle immediately forward of the long rear seat were occupied by colored persons; that the seats second forward of the long rear seat were occupied by two colored persons

seated on the right side of the aisle (in a view from front to rear of the bus) and by two white passengers seated on the left side of the aisle; that the seat third forward of the long rear seat were occupied by two colored persons on the right side of the aisle and by a white woman and [fol. 40] a white child on the left side of the aisle; that she, the defendant took a seat on the long rear seat, and that a colored man, who also boarded the bus at Hayes Store, also took a seat on the long rear seat, thus making a total of six or seven passengers occupying the long rear seat; that numerous persons, both white and colored, were standing in the aisle.

The defendant testified further that between Hayes Store and Saluda, the two colored passengers occupying the seat second forward from the long rear seat on the right side of the aisle got off the bus, whereupon two white passengers occupied said seat; that the bus arrived in Saluda about 11 o'clock A. M.; that at the time the bus arrived there, colored persons occupied the long rear seat, there being about six or seven in all occupying that seat, the seats immediately forward of the long rear seat on each side of the aisle and the seat third forward of the long rear seat on the right side of the aisle, while white passengers occupied all of the remaining seats in the bus, including the seats on each side of the aisle second forward from the long rear seat, and the seat third forward of the long rear seat on the left side of the aisle; that upon arrival in Saluda, the white woman and the white child who previously occupied the seat third forward on the left side of the aisle left the bus; that she, the defendant, thereupon moved into said seat, occupying the half of said seat next to the window; that a colored woman, who was, as the defendant later learned, Estelle Fields, and who was carrying an infant in her arms, boarded the bus and took the vacant seat beside the defendant.

At this point Estelle Fields was presented before the defendant, and the defendant was requested to look at her and identify her. The defendant then stated that the said Estelle Fields was the person who carried the infant and who took the seat beside the defendant.

The defendant further testified that there were still a large number of persons of each race standing in the aisle; that after she and Estelle Fields had sat in the said seat for about five minutes, a white woman accom-

panied by a white man boarded the bus, which was still standing in Saluda, that thereupon the bus driver approached the defendant and Estelle Fields, and told them that they must get up so that the white couple might sit down; that she, the defendant thereupon informed the driv [fol. 41] er that she was willing to change her seat to another seat in the bus, but that she was unwilling to stand for the remainder of her trip; that she also told the bus driver that it was her understanding of the laws of Virginia that colored persons were entitled to occupy the seats from the center of the bus to the rear, and that white passengers were entitled to occupy the seats from the center of the bus to the front; that in reply the bus driver announced that colored persons would be seated only after all white persons had obtained seats; that when asked by the defendant where she, the defendant, would sit if she relinquished the seat in which she was sitting, the bus driver said nothing; that at the time she was told to move, there were no vacant seats in the bus; that at no time did the bus driver offer her another seat, or attempt to move another passenger or passengers in order that seat space for her might be procured, or ask any person or persons on said bus except the defendant and Estelle Fields, to move from or relinquish their seats; that the bus driver never said anything to her concerning the requirements of the laws of Virginia, but she did say to the bus driver that she knew as much about the rules of the bus company as he did; that at no time did she, the defendant, pull Estelle Fields back into the seat or in any way interfere with her movements or otherwise attempt to prevent her from leaving the seat.

The defendant testified further that the bus driver then left the bus, and returned later with the sheriff and the deputy sheriff; that she did not know who the persons accompanying the bus driver were; that she never saw any badge or other indication of official authority upon either; that the sheriff approached her with a sheet of paper in his hand, the purport of which she did not know; that the sheriff merely stated: "I have a warrant"; that she, the defendant, thereupon inquired: "A warrant for whom?" and asked for what the warrant was issued; that the sheriff said nothing and immediately put the paper into his pocket; that she did not, as stated by witnesses for the Commonwealth snatch the paper from his hand, or throw

it behind the seat, or in any way touch the paper or interfere with the sheriff's possession thereof; that after placing the paper in his pocket, the sheriff asked her whether she would move out of the seat; that she thereupon told him that she was willing to exchange her seat for another seat on the bus, but that she was not willing to stand; that without more, she was seized by the arms by the sheriff and his deputy and forcibly taken from the bus; that she [fol. 42] did hold on the seat in an effort to maintain her position therein, but at no time did she kick the sheriff or strike at the deputy sheriff or attempt in any manner to inflict bodily harm or injury upon either; that injury was inflicted to her arms and shoulders from the rude manner in which she was removed from the bus; but that aside from this there was no further violence and no further words between the parties; that she was placed in the jail in Salula and kept there from about 11:30 A. M. until about 5:00 or 6:00 P. M. on July 16th, 1944, when she was released on bail fixed in the sum of $500.00.

Cross-examination:

On cross examination the defendant testified that there were no vacant seats on the long rear seat, or elsewhere in the bus when the bus driver and sheriff respectively, asked her to move; that there were a large number of persons, both white and colored, standing in the aisle at that time; that she told the bus driver, and also the sheriff, when they, respectively, told her to relinquish her seat, that she would move to any other seat in the bus; but would not stand; that she told the bus driver that she thought that under the laws of Virginia the space in the bus from the center to the rear thereof was for occupancy by colored passengers, and that from the center to the front thereof was for occupancy by white passengers; that the bus driver did not at any time *said* anything to her concerning the requirements of the laws of Virginia, that rather the bus driver stated that colored passengers would not be seated until all white passengers had been seated; that she, the defendant, did not pull Estelle Fields back into the seat as testified to by the bus driver; that she did not snatch, or try to snatch, the warrant from the sheriff; or throw the same behind the seat; that she did not kick the sheriff; that she did not strike at the deputy sheriff.

Estelle Fields.

Direct examination:

Estelle Fields testified that she is a native of Middlesex County, Virginia, but that she now resides in Philadelphia, Pennsylvania; that on the 16th day of July, 1944, she boarded a Greyhound bus in Saluda, Virginia, en route to [fol. 43] Philadelphia at about 11:00 o'clock A. M.; that this was the same bus upon which the defendant, Irene Morgan, was riding; that she did not know Irene Morgan at that time; that on this day and at this time she was carrying an infant in her arms; that when she boarded the bus there was only one seat vacant therein; that that seat was the seat beside the defendant and was the half of the seat next to the aisle on the left-hand side of the aisle looking to the rear of the bus; that there were no vacant seats on the long rear seat, or elsewhere in the bus; that a large number of persons of both races were standing in the aisle; that she sat into the seat beside the defendant, and held the infant in her lap; that the bus driver then came back towards them; that there were no available seats in the bus at this time; that the bus driver stated that no colored passengers would be seated until all white passengers had been seated; that the seat immediately behind the seat occupied by the defendant and the witness were occupied by two white passengers, but that notwithstanding this fact the driver made no effort to shift the defendant and her to another seat in the bus; that neither she nor the defendant moved pursuant to the demand of the bus driver; that she, the witness made no effort to move; that the defendant at no time pulled her back into the seat, or attempted to keep her from moving therefrom; that the driver left the bus and returned later with the sheriff and his deputy; that the deputy sheriff came up and told them to move from the seat; that she, the witness, then got out of the seat, but had to stand in the aisle, as there was no other vacant seat in the bus; that she did not hear the sheriff say that he had a warrant; that she never saw a warrant; that the sheriff never read a warrant to the defendant; that so far as she, the witness, knew, the defendant did not snatch a warrant from the sheriff; that she, the witness did not see the defendant kick the sheriff, or strike at the deputy or use violence against either; that the sheriff demanded that the defend-

ant relinquish her seat; that the defendant stated that she was willing to exchange the seat she then occupied for any other seat in the bus, but that she, the defendant, was unwilling to stand; that after the defendant refused to move from the seat, the sheriff and the deputy sheriff seized the defendant and pulled her from the seat and took her off the bus; that the defendant tried to keep her seat, and held on to the seat when they tried to remove her, but that she, the defendant, did not strike at the officers, or either of them, or subject either to violence; that [fol. 44] she, the witness, continued the trip standing; that a passenger offered to hold the baby and did hold the baby until she, the witness, was able some time later to obtain a seat.

Cross-examination:

On cross examination Estelle Fields testified that there never were any vacant seats on the long rear seat; that the only vacant seat she saw anywhere in the bus when the bus was standing in Saluda was the seat beside the defendant, which she, the witness took; that she got out of the seat when the sheriff asked her to move, but that she was not able to find a seat and so had to stand; that she did not move when the bus driver came back because she was not sure whether the bus driver was speaking to her; that she did not see the defendant kick the sheriff, or strike at his deputy, or either; that she did not see the defendant snatch the warrant from the sheriff; that she did not see a warrant; that the defendant tried to keep her seat when the sheriff and deputy took her out of the seat, but that the defendant did not strike at either.

Richard Scott.

Direct examination:

Richard Scott testified that on the 16th day of July, 1944, he boarded a Greyhound bus in Norfolk, Virginia, and traveled thereon to Saluda, Virginia; that this was the same bus on which the defendant rode; that the defendant boarded the bus at Hayes Store, Virginia; that when the bus arrived in Saluda, the defendant sat in the third seat forward of the long rear seat on the left side of the aisle; that when she so sat there this seat was the

only vacant seat on the bus; that at this time there was no vacant seat on the long rear seat; that he, the witness, and Willie Robinson were sitting on the long rear seat when the bus arrived at Saluda; that there were six or seven persons seated on the long rear seat between Hayes Store and Saluda; that he, the witness, and Willie Robinson left the bus at Saluda; that when they got up out of their places on the long rear seat, other passengers in the bus, who were then standing, immediately sat in the seats thereon which they vacated; that when they left the bus there were numerous persons both white and colored, standing in the aisle; that he did not see the bus driver try to [fol. 45] move the defendant; that he did not see the sheriff or the deputy sheriff, that he left the bus before any further events occurred.

Cross examination:

On cross examination Richard Scott testified that he and Willie Robinson left the bus when the same stopped in Saluda, and that consequently he saw none of the incidents occurring between the bus driver and the defendant, or the sheriff *of* deputy sheriff and the defendant.

Willie Robinson.

Direct examination:

Willie Robinson testified that on the 16th day of July, 1944, he got on a Greyhound bus in Norfolk, Virginia; that he traveled on said bus to Saluda, Virginia; that this was the same bus on which the defendant rode; that the defendant got on the bus at Hayes Store, Virginia; that he and Richard Scott were seated on the long rear seat; that there were about six or seven persons seated on the long rear seat when the bus arrived in Saluda; that upon arrival in Saluda, the defendant moved into the third seat forward of the long rear seat on the left side of the aisle; that when she so moved the seat into which she moved was the only vacant seat in the bus; that he and Richard Scott left the bus in Saluda; that when they got up from the long rear seat standing passengers immediately sat in the seats thereon which they so vacated; that when they left the bus there were a number of persons of each race standing in the aisle; that he saw none of the events

occurring with respect to efforts to move the defendant from the seat, he having left the bus before they took place.

William Garnett.

Direct examination:

William Garnett testified that on the 16th day of July, 1944, he took his sister, who was traveling to Pennsylvania, to the bus at Saluda; that he went aboard the bus with his sister's bags and placed the bags in the bus for her; that the bus which he so entered was standing in the bus depot in Saluda at about 11 o'clock A. M. on this day, that the bus was crowded, with both white and colored passengers standing in the aisle; that he looked about the bus in an [fol. 46] effort to find his sister a seat, but that all seats in the bus were occupied; that he left the bus; that when he so left the bus his sister was still standing.

Thomas Carter.

Direct examination:

Thomas Carter testified that on the 16th day of July, 1944, he was in Saluda, Virginia, at the Greyhound bus depot at about 11 o'clock A. M.; that the bus depot is across the street from the jail; that about this time he saw the sheriff and the deputy sheriff bringing the defendant from the bus to the jail; that the defendant was then peaceably accompanying the sheriff and deputy, and was offering no resistance to either, but that she was then being handled roughly and rudely by the sheriff and the deputy.

Rachel Goldman.

Direct examination:

Rachel Goldman testified that she resides in Gloucester County, Virginia; that she knew the defendant, Irene Morgan; that she had known the defendant practically all of her life; that she, the witness, had resided in Gloucester County, Virginia, and also in Baltimore, Maryland; that she knew the defendant both in Gloucester and in Baltimore; that during the time she had known the defendant she, the witness, had heard the defendant's character and reputation for peace and good order, and for truth and veracity,

discussed by the members of each community and knew what her community reputation is in each respect; that her community reputation for peace and good order is good both in Gloucester County and in Baltimore; that the defendant's community reputation in each place for truth and veracity is good; that during the time she had known the defendant she had never heard anything said which detrimentally affected her community reputation in either respect.

Ruby Catlett.

Direct examination:

Ruby Catlett testified that she resides in Gloucester County, Virginia; that she knew the defendant, Irene Morgan; that she had known the defendant for a long time; that she, the witness, had resided both in Gloucester County and [fol. 47] Baltimore, Maryland; that she knew the defendant both in Baltimore and in Gloucester County; that during the time she had so known the defendant, she, the witness, had heard the defendant's character and reputation for peace and good order, and for truth and veracity discussed by members of each community and knew what her community reputation is in each respect; that her community reputation in each place for peace and good order is good; that her community reputation in each place for truth and veracity is good; that during the time she had so known the defendant she had never heard anything said which detrimentally affected her character in either respect.

Upon this testimony the defendant rested her case.

The Commonwealth thereupon rested its case.

The defendant then renewed her motion that the Court strike out all of the evidence of the Commonwealth, and dismiss the case wherein she was charged with a violation of Section of 4097dd of the Code of Virginia, as fully set forth in Bill of Exception No. 2, to which reference is hereby made, and upon the grounds and for the reasons therein set forth. This motion the Court overruled, to which action of the Court the defendant excepted.

Each and every witness testifying in the case, as aforesaid, was first sworn according to law.

And the defendant tendered this her Bill of Exception No. 1 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the

record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

[fol. 48] BILL OF EXCEPTION No. 2—Filed December 7, 1944

Be it remembered that on the trial of this case when the Commonwealth had completed its presentation of its evidence-in-chief and had rested, the defendant moved to strike all of the evidence of the Commonwealth and to dismiss the case upon the grounds that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, towit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the evidence of the Commonwealth, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce.

The Court overruled said motion, to which action of the Court the defendant thereupon excepted.

At the conclusion of the case when both the Commonwealth and the defendant had rested, the defendant renewed her motion to strike all evidence of the Commonwealth, and to dismiss the case, upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sus-

tain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the evidence both for the Commonwealth and the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; and that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of [fol. 49] the United States. The Court overruled said motion, to which action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 2 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

BILL OF EXCEPTION NO. 3—Filed December 7, 1944

Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial

(said certificate and statement of testimony being contained and set forth at length in defendant's Bill of Exception No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to wit: "That the defendant did unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd."

Whereupon the defendant moved the Court that said judgment be set aside and a new trial be awarded the defendant, and that the Court arrest judgment therein and not pronounce the same, on the grounds that no judgment could lawfully be rendered against her in this case, for [fol. 50] the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger was in violation of Article I, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must and should be construed as limited in its operation to passengers in intrastate commerce; that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States; and that said finding and verdict were contrary to the evidence, and lacking in evidence sufficient to support the same.

The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 3 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

BILL OF EXCEPTION NO. 4—Filed December 7, 1944

Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial (said certificate and statement of testimony being contained and set forth at length in the defendant's Bill of Excep- [fol. 51] tion No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to-wit: that the defendant did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd."

Whereupon, and after the Court had overruled the defendant's motion to set aside said judgment, as set forth in detail in defendant's Bill of Exception No. 3, and asked to be read as if here inserted, the defendant moved the Court to award her a new trial, and that the Court arrest judgment therein and not pronounce the same, upon the same grounds and for the same reasons assigned in support of her prior motion to set aside the said judgment, as set forth at length in defendant's Bill of Exception No. 3, to which reference is hereby made for the grounds and reasons assigned in support of this her motion for a new trial, and asked to be read as if here inserted.

The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 4 on the 27th day of November, 1944, and prayed, that the same be

signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

CLERK'S CERTIFICATE

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF MIDDLESEX, JANUARY 10, 1945

I, C. W. Eastman, Clerk of the Circuit Court of the County of Middlesex, Virginia, do hereby certify that the foregoing is a true, accurate and complete transcript of the record in the case of Commonwealth of Virginia, Plain-
[fol. 52] tiff, *versus* Irene Morgan, Defendant, as appears on file and of record in my office aforesaid and which I, as Clerk of said Court, have been requested by counsel for said defendant to copy for the purpose of its presentation, along with a petition for a writ of error to the judgment in said case, to the Supreme Court of Appeals of Virginia.

And I further certify that it affirmatively appears from the papers filed in said case the Honorable Lewis Jones, Commonwealth's Attorney for the County of Middlesex, Virginia, who was counsel of record for said plaintiff, had due written notice of the intention of said defendant to apply for the foregoing transcript of record and of the time and place at which such application would be made, and, further, that such counsel had due written notice of the time and place at which the foregoing bills of exception would be presented to the Honorable J. Douglas Mitchell, Judge of the Circuit Court of the County of Middlesex, Virginia, to be signed, sealed, and enrolled as and made a part of the record in this case.

Given under my hand and seal of said Court this 10th day of January, 1945.

C. W. Eastman, Clerk of the Circuit Court of Middlesex County, Virginia. (Seal.)

VIRGINIA:

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

Case 331. File 40

COMMONWEALTH

v.

IRENE MORGAN

Resisting Arrest

JUDGMENT—October 18, 1944

This day came the Attorney for the Commonwealth and the accused, Irene Morgan came to the bar with her counsel, Spottswood Robinson III, and Linwood Smith, and the Court having maturely considered of its judgment in this case doth find the defendant Guilty; thereupon the defendant moved the Court to set aside its findings of fact and grant the defendant a new trial, upon the ground that said findings of fact were contrary to the law and the evidence, and assigned as reasons in support of said motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the [fol. 53] defendant a new trial in the case wherein she was adjudged guilty of a violation of Section 4097dd of the code, and the additional reason that the arrest of her person sought to be made in this case was illegal, and that her conduct was therefore within her privilege to resist an unlawful arrest. This motion the Court overruled, to which action of the Court the defendant excepted. Defendant moved the Court to grant her a new trial, upon the ground that her conviction was erroneous under the law and contrary to the evidence, and assigned as reasons in support of this motion the same reasons previously advanced in support of her motion to set aside the findings of fact and to grant the defendant a new trial in the case wherein she was adjudged guilty of Violating Section 4097dd, and the additional reason previously advanced in support of her motion to set aside the findings of fact and to grant her a new trial in this case. This motion the Court overruled, to which action of the Court the defendant excepted.

The Court doth sentence the said Irene Morgan to pay a

fine to the use of the Commonwealth of One Hundred Dollars, and the costs in this behalf expended, the said fine and costs to be paid within thirty (30) days from the rising of this Court. It is further ordered that the said Irene Morgan enter into a bond before the Clerk of this Court on or before October 19th, 1944, with sufficient security in the sum of Five Hundred Dollars for her appearance on the 1st day of November Term, to-wit: November 27th, 1944, and the said Irene Morgan was recognized in the sum of Fifty Dollars for her appearance in this Court on the 19th day of October, 1944.

Defendant moved the Court to arrest the judgment in this case upon the grounds of errors of law and fact apparent upon the face of the record in the case, and assigned as reasons in support of this motion the same reason previously advanced in sup-ort of her motion to set aside the findings of fact and to grant the defendant a new trial in the case wherein she was adjudged guilty of violating Section 4097dd, and the additional reason previously assigned in support of her motion to set aside the findings of fact and to grant her a new trial in this case. This motion was overruled, to which action of the Court the defendant excepted.

VIRGINIA:

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

The foregoing order entered on the 18th day of October, [fol. 54] 1944, in the Criminal Case Numbered 331 on the Docket of this Court, in the Style of

IRENE MORGAN

v.

COMMONWEALTH

Appeal from Trial Justice: Misdemeanor. Resisting Arrest

is attached hereto with the consent of all parties to show the disposition of this case, as it was tried with the consent of all parties along with and upon the same evidence heard

in the Criminal Case Numbered 330 on the Docket of this Court in the Style of

IRENE MORGAN

v.

COMMONWEALTH

Appeal from Trial Justice: Misdemeanor. Violation of Section 4097dd of 1942 Code.

on which the defendant has indicated her desire and intention to present to the Supreme Court of Appeals of Virginia a petition for a writ of error to the judgment herein. The case Numbered 331 Resisting Arrest being off the Criminal Docket of the Court as the fine and costs have been paid.

January 10th, 1945.

Teste:

C. W. Eastman, Clerk of the Circuit Court of the County of Middlesex.

A Copy—Teste:

M. B. Watts, C. C.

[fol. 55] IN SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 2974

Present: All the Justices.

IRENE MORGAN

v.

COMMONWEALTH OF VIRGINIA

From the Circuit Court of the County of Middlesex
J. Douglas Mitchell, Judge

OPINION BY JUSTICE HERBERT B. GREGORY—June 6, 1945

The plaintiff in error was found guilty of a violation of section 4097dd of the Virginia Code (Michie), Acts 1930, p. 344, and fined $10 and costs. She attacks the judgment of the lower court upon the ground that the statute does

not apply to her because she was an interstate passenger on an interstate bus and, if it does, it is unconstitutional.

The facts, briefly, are as follows: On July 16, 1944, the plaintiff in error, who will be hereinafter referred to as the defendant, was a passenger upon a bus of the Richmond Greyhound Lines, Inc. She was a member of the Negro race, and had purchased a ticket at Hayes Store, in Gloucester county, Virginia, to Baltimore, Maryland. The bus on which she was riding was operated from Norfolk, Virginia, to Baltimore, Maryland. Upon arriving at Saluda, Middlesex county, Virginia, she was sitting in the second seat toward the front from the long seat in the extreme rear of the bus. There were two vacant spaces upon the long rear [fol. 56] seat, and six white passengers were standing. The bus driver requested the defendant and her seatmate, another woman of the Negro race, to change their seats and occupy the two vacant spaces on the rear seat. The seatmate attempted to make the exchange but as she sought to arise she was pulled back by the defendant. The defendant refused to change her seat as requested. The bus driver explained to her the rules and regulations of the company as to seating colored and white passengers on buses, and informed her that he was required to seat white passengers from the front of the bus toward the rear and colored passengers from the rear of the bus forward.

Exhibit "A" sets forth the regulation of the company. It is in this language:

"T-22 Rights Reserved: This company reserves the right to refuse transportation to any and all persons for the following reasons:

"(c) This company reserves full control and discretion as to the seating of passengers and the right to change such seating at any time during the trip except on divisions or runs where specific seat reservations are made, in which case, passengers shall retain the seats assigned them unless [fol. 57] same be contrary to any laws or governmental regulations."

Upon the refusal of the defendant to change her seat the driver of the bus caused a warrant to be sworn out for her. The sheriff and a deputy boarded the bus with the warrant and requested the defendant to change her seat. The sheriff attempted to read the warrant to her but she snatched it

out of his hand and threw it behind the seat. The woman seated beside the defendant moved but the defendant again refused to move, whereupon, the sheriff and his deputy arrested her and took her off the bus. When they attempted to remove her from the bus the defendant struck at the deputy but did not hit him. She kicked the sheriff three times on his leg, and reiterated that she would neither change her seat nor get off the bus. The officers placed her in jail.

In addition to being tried for a violation of sec. 4097dd, she was also tried at the same time for resisting arrest and found guilty upon that charge and adjudged to pay a fine of $100 and costs. She has not sought a writ of error to this judgment. The writ of error here is to the judgment of the court finding the defendant guilty of a violation of section 4097dd.

There are two questions presented by the assignments of [fol. 58] error. First, is the statute upon which the defendant was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional? Second, should the statute upon which the defendant was prosecuted be construed as limited in its operation to passengers in intrastate commerce, and therefore as inapplicable to the defendant?

The decisive questions present only questions of law. It is conceded by counsel for the defendant that the facts as found by the court below are binding upon the defendant.

Section 4097dd reads as follows:

"Violation by passengers; misdemeanor; ejection.—All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seat from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and [fol. 59] colored persons, respectively, having been first advised of the fact of such regulation, and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five

dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

In 1930 the General Assembly of Virginia enacted the statute known as Chapter 128, found in the 1930 Acts at pages 343 and 344. The title of the Act is "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." The pres- [fol. 60] ent Code sec. 4097dd is the latter portion of the Act.

The Act provides that all passenger motor vehicles operating under Chapter 161-A of the Code shall segregate passengers according to color, and that any carrier failing to comply shall be fined.

The Act also provides that those so operating motor vehicles shall make no difference or distinction in the quality or convenience of the accommodations provided for the two races.

The Act further provides that the driver or operator or other person in charge of any motor vehicle above mentioned shall have the right, and he is directed, to require at any time when it may be necessary or proper for the comfort or convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race, and that any driver or operator of a bus who shall fail or refuse to carry out the provisions of this section shall be guilty of a misdemeanor.

The Act further provides that the operator of such vehicle shall be a special policeman and have all the powers of a conservator of the peace in the enforcement [fol. 61] of the provisions of the Act.

Then follows the latter portion of the Act now known as sec. 4097dd of the present Code (Michie), which has already been quoted.

It is conceded that on the bus upon which the defendant was riding there were provided equal facilities for both races, and that there was no difference or discrimination in the quality or convenience of the accommodations provided for the two races.

The Attorney General has made a motion to dismiss the writ of error, but the ultimate view of the court will render it unnecessary to pass upon that motion.

The public policy of the Commonwealth of Virginia, as expressed in the various legislative Acts, is and has been since 1900 to separate the white and Negro races on public carriers. As to railroads, see Acts of 1906, pages 236 and 237, carried in Michie's Code of 1942 as secs. 3962-3968; as to steamboats, see Acts of 1900, page 340, carried in Michie's Code 1942 as secs. 4022-4025; as to electric or street cars, see Acts of 1902-03-04, page 990, carried in Michie's Code 1942 as secs. 3978-3983, and as to motor vehicles see Acts of 1930, pages 343 and 344, carried in [fol. 62] Michie's Code of 1942 as secs. 4097z, 4097aa, 4097bb, 4097cc, and 4097dd.

So far as we are advised no case contesting the validity of any of these segregation Acts as applied to interstate passengers has been previously before this court, or any attempt made to repeal them.

Article 1, sec. 8, clause 3, of the Constitution of the United States provides that Congress shall have the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." And Article 10 of the amendments to the Constitution of the United States provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Under the tenth amendment there is reserved to the States the right to exercise the police power. The State may enact legislation under the authority of the police power, even though such legislation may incidentally affect interstate commerce.

The Virginia segregation statutes have been enacted under the police power of the State reserved to it in the tenth amendment to the U. S. Constitution.

[fol. 63] Unless it is shown that the statute here challenged directly or unreasonably interferes with interstate commerce it is a valid enactment. There is no evidence in this case that the rule of the carrier or the statute under which it was promulgated does so. The burden of proof on this issue rested upon the defendant and she has failed to carry it. *Bourjois, Inc.* v. *Chapman*, 301 U. S. 183, 57 S. Ct. 691, 81 L. ed. 1027.

It must be borne in mind that here the carrier is not contending that interstate commerce is unreasonably burdened by the statute. It does not contend that the statute places any added expense upon it or that it is inconvenienced or that it is against peace and good order to separate the races as it does under its rule. In fact the carrier was not even a party to this litigation.

The general rule is that if the enactment which requires the segregation of races according to color directly or unreasonably interferes with commerce it is not constitutional. *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. ed. 547; *McCabe* v. *Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 59 L. ed. 169, 35 S. Ct. Rep. 69. But unless the regulation unreasonably burdens commerce it is valid.

In *South Covington and C. St. R. Co.* v. *Kentucky*, 252 [fol. 64] U. S. 399, 64 L. ed. 631, 40 Sup. Ct. Rep. 378, it was held that a Kentucky street railway may be required by statute of that State to furnish separate cars or separate compartments in the same car for white and negro passengers, although its principal business is the carriage of passengers in interstate commerce between Cincinnati, Ohio, and Kentucky cities across the Ohio river. It was held that such a requirement affects interstate commerce only incidentally and does not subject it to unreasonable demands.

It was also held in *Smith* v. *State*, 100 Tenn. 494, 41 L. R. A. 432, 46 S. W. 566; *Alabama and B. R. Co.* v. *Morris*, 103 Miss. 511, 60 So. 11, Ann. Cas. 1915B, 613, and *So. R. Co.* v. *Norton*, 112 Miss. 302, 73 So. 1, that State statutes providing for separate but equal accommodations for white and colored races on railroads are valid police regulations and that they apply both to intrastate and interstate travel. In these cases comment is made that the Supreme Court has not directly passed upon the validity of such statutes and that the ultimate settlement of the question rests with that

court. It is also suggested in the *Morris case* that until that court decides against the validity of such statutes, the court wil be impelled to adhere to the belief that the [fol. 65] law is not only beyond criticism from a constitutional standpoint but is also a reasonable and wise exercise of the police power of the State.

There are cases from several States which support the contention that a segregation statute is unconstitutional as respects interstate passengers. See *Hart* v. *State*, 100 Md. 595, 60 Atl. 457; *Carrey* v. *Spencer*, 72 N. Y. S. R. 108, 36 N. Y. Supp. 886; *Washington B. & A. Elec. R. Co.* v. *Waller*, 53 App. D. C. 200, 289 Fed. 598, 30 A. L. R. 50. See also annotation in 30 A. L. R. at p. 55, where a number of cases are collected.

The defendant places strong reliance upon the case of *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. ed. 547. That case arose in 1877 under a Louisiana statute enacted in 1869 which required that no regulation of any carrier should make any discrimination on account of the race or color of the passenger. The plaintiff was a member of the Negro race and she sought accommodations on an intrastate journey in Louisiana on a steamboat operated by one Benson, which plied on the Mississippi river between New Orleans, Louisiana, and Vicksburg, Mississippi. She was refused accommodations in the cabin set apart for white persons, and sued Benson for damages as provided in the statute. [fol. 66] He maintained that he was engaged in interstate commerce and that the Louisiana statute could have no application to him, and that he could promulgate any rules he desired. The Supreme Court of Louisiana held the statute applicable and that it was not a regulation of interstate commerce. The case was appealed to the Supreme Court of the United States and there reversed, the Court holding that the statute was an unreasonable burden upon interstate commerce and therefore in violation of the Constitution.

The court found as a fact that the Louisiana Act was a direct interference with interstate commerce; while in the case at bar the challenged Act has not been shown nor found to be an interference with interstate commerce.

In the *Hall case* it is apparent that the Louisiana Act was not enacted in pursuance of the police power of the State, while the Virginia Act was enacted under the police power.

It is also noted that the Louisiana statute prohibited the segregation of the races and that the rule of the carrier required such segregation, while in Virginia our statute not only requires separation of the races on public carriers but the carrier in this instance has a rule [fol. 67] promulgated under the statute providing for the seating of passengers in the bus, and reserving to itself the right to change such seating at any time during the trip.

The Louisiana statute and the rule of the carrier were in direct conflict. To enforce the rule of the carrier would have been to violate the terms of the statute, while to enforce the terms of the statute would have been to violate the rule of the carrier. No such situation exists in Virginia. In the case at bar the rule of the carrier, instead of being at variance with the provisions of the statute, is entirely consistent with it—the rule having been made under the terms of the statute.

There is a conflict in the many cases dealing with State statutes which require the separation of the white and colored races by public carriers. No case from the Supreme Court of the United States has directly considered the issue raised in the case at bar. It is needless for us to refer to all of the cases or to attempt to discuss and distinguish them. Each case must largely depend upon its own facts, and if a statute results in imposing a direct or unreasonable burden upon interstate commerce it should be declared unconstitutional. On the other hand, if it creates no such burden, it is not obnoxious to the Constitution.

[fol. 68] In 11 Am. Jur., Commerce, sec. 8, the rule controlling the division and classification of powers is stated thus:

"The constitutional provision which confers upon Congress the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes' grants all of the authority which the United States has over commerce. The respective powers of Congress and the States under this provision are divided into three fields: (1) That in which the authority of Congress is exclusive; (2) that in which the power of the State is exclusive; and (3) that in which the State may act in the absence of legislation by Congress. The line of division

between Congressional and State power over commerce is a question for judicial decision, depending upon the words of the Federal Constitution. * * *"

In *Covington & Cincinnati Bridge Co. v. Commonwealth of Kentucky*, 154 U. S. 204, 14 S. Ct. 1087, 38 L. ed. 962, it was held that the adjudications of the Supreme Court of the United States with respect to the power of the States over the general subject of commerce are divisible into three classes: "First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those [fol. 69] in which the action of Congress is exclusive and the States cannot interfere at all."

In the case at bar the defendant contends that Congress possesses the exclusive power in matters relating to interstate commerce, and that the States cannot act at all, while the Attorney General contends that the case at bar falls within the second class set out in the *Covington case*, and that the State may act in the absence of legislation by Congress.

It appears that certain members of Congress have attempted to induce Congress to invade the so-called segregation field, but so far without success. On three occasions it has expressly refused to legislate on the subject. On January 5, 1938, Representative Mitchell introduced the following bill in Congress to amend U. S. C. title 49, sec. 3(1). (See H. R. 8821, Congressional Record, Vol. 83, part 1, p. 74):

"It shall be unlawful to segregate any persons traveling as interstate passengers on any carrier subject to the provisions of this Act, or in railroad stations, waiting rooms, rest rooms, lunch rooms, restaurants, dining cars, or in any other accommodations provided for passengers traveling interstate, on account of such passengers' race, color, or religion; and any such discrimination or attempted dis- [fols. 70-71] crimination shall subject the offending carrier, its officers, agents, servants, and employees, to the penalties hereinafter provided for violation of this Act."

This bill was referred to the Committee on Interstate and Foreign Commerce but was never reported out.

On January 3, 1939, the bill was re-introduced as H. R. 182, (Congressional Record, Vol. 84, part 1, p. 27), and

again referred to the same committee. This committee was studying and developing the Interstate Commerce Act, and the Transportation Act of 1940, (See Pocket Supplement to U. S. C. A., Vol. 49, title Transportation), was finally enacted, but the bill was not reported out nor were its provisions incorporated in any other measure.

On January 3, 1941, the bill was re-introduced as H. R. 112 (Congressional Record, Vol. 87, part 1, p. 13), and for the third time it was not reported out of committee.

There is now pending in the Committee on Interstate and Foreign Commerce a bill known as H. R. 1925, which it is again sought to abolish segregation on public carriers. What the fate of this latest attempt will be, is, of course, not known.

This continued refusal of the Congress to legislate in [fol. 72] the segregation field demonstrates its desire that the matter be left where it is now; that is, that the several States, under their police power, be permitted to continue to legislate in this field, subject only to the limitation that they shall not directly or unreasonably burden interstate commerce.

The Supreme Court has held that a State may tax interstate commerce even though it increases the cost of doing business. Even interstate business must pay its way. The bare fact that one is carrying on interstate commerce does not relieve him from many forms of State taxation which add to the cost of his business.

In *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. ed. 565, Mr. Justice Stone, speaking for the court, said: "Section 8 of the Constitution declares that Congress shall have power * * * to regulate commerce with foreign nations and among the several States. * * * In imposing taxes for State purposes a State is not exercising any power which the Constitution has conferred upon Congress. It is only when the tax operates to regulate commerce between the States or with foreign nations to an extent which infringes the authority conferred upon Congress that the tax can be [fol. 73] said to exceed constitutional limitations." Citing cases.

And again the Justice said: "In few of these cases could it be said with assurance that the local tax does not, in some measure, affect the commerce or increase the cost

of doing it. But in them as in other instances of constitutional interpretation so as to insure the harmonious operation of powers reserved to the States with those conferred upon the national government, courts are called upon to reconcile competing constitutional demands, that commerce between the States shall not be unduly impeded by State action and that the power to lay taxes for the support of State government shall not be unduly curtailed."

Thus a State may tax interstate commerce and increase the cost of doing that business. Commerce is bound to be affected and burdened. However, under the case just referred to, as long as the State tax does not infringe the authority conferred upon Congress to regulate commerce among the several States, it is not invalid.

If State taxation statutes are constitutional even though they add to the cost of doing an interstate business, it would certainly seem logical that a segregation statute which [fol. 74] is not shown to affect interstate commerce in any way, except perhaps to improve it, would also be valid. If the defendant here and her seatmate had complied with the rule of the carrier and had occupied the rear vacant seats assigned them, then two of the six white passengers could have been seated. Thus complying with the rule of the carrier and the statute not only would not have directly or unreasonably impaired interstate commerce but it would have aided it.

It is conceded that in so far as the commerce clause is concerned the Virginia Act is valid, if restricted in its application to intrastate passengers. It is said that the Act is severable, and we are asked to so hold, and to invalidate it as to interstate passengers.

The language of the statute embraces all motor vehicles and all passengers, both interstate and intrastate. If the statute were held to be valid as to intrastate passengers and invalid as to interstate passengers, a condition would exist that would adversely disturb the peace and welfare. Then an interstate white passenger could occupy the rear seat with an intrastate Negro passenger, and an interstate Negro passenger could occupy a front seat with an intra- [fol. 75] state white passenger. This would tend to confusion and disorder, and in effect, to allow the interstate Negro and white passengers to have the run of the entire bus, while confining the intrastate white and colored pas-

sengers to the front and rear of the bus, respectively. The result would be that the Segregation Act in its entirety would effectively be disrupted.

The point raised for the first time in the defendant's reply brief that the Act is not constitutional because it delegates legislative power to a private corporation brings into the case a question not raised in the pleadings in the court below or in the assignments of error or in the petition for a writ of error. It was not an issue in the case, and the attempt to inject it into the case for the first time by asserting it in the reply brief is violative of rule 22 of this court.

However, we do not think there would be any merit in the point if it had been properly raised. The statute, when read in its entirety, clearly demonstrates that no power is delegated to the carrier to legislate and determine what conduct shall be considered a crime. The statute simply describes conditions which must first be found to exist before it be- [fol. 76] comes applicable. There is no uncertainty about the conditions that must exist before the offense is complete. The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier. An interesting and exhaustive annotation on "Permissible Limits of Delegation of Legislative Power" is found in 79 L. ed. of the U. S. Supreme Court Reports, beginning at page 474, following the case of *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. At page 496 (79 L. ed.) the specific point is discussed and the pertinent cases cited. They are: *Whaley* v. *State*, 168 Ala. 152, 52 So. 941, 30 L. R. A. (N. S.) 499; *Samuelson* v. *State*, 116 Tenn. 470, 95 S. W. 1012, 115 Am. St. Rep. 805, and *Re O'Neill*, 41 Wash. 174, 83 P. 104, 3 L. R. A. (N. S.) 558, 6 Ann. Cas. 869.

In Virginia the statute demands equality of treatment of the white and Negro races by the carriers as well as equality in the facilities provided by the carriers for them. A statute which would permit inequalities in these respects would be invalid. Here the segregation statutes are enforced against the members of the white as well as against those of the Negro race. They must be enforced equally and without discrimination against both races. *Davis* v. *Commonwealth*, 182 Va. 760, 30 S. E. 2d 700.

We are of the opinion the statute does not result in a [fol. 77] discrimination against either the white or the Negro race, and that it does no violence to the fourteenth

amendment to the U. S. Constitution (see *Plessy* v. *Ferguson*, 163 U. S. 537, 41 L. ed. 256).

The silence of Congress on this subject places it in the "second" category outlined in *Covington & Cincinnati Bridge Co.* v. *Kentucky*, *supra*, where the State is allowed to act in the absence of legislation in this field by Congress. If Congress desires to nullify State segregation statutes as applicable to interstate passengers it has the power to do so under the commerce clause. However, until Congress pre-empts this legislative field by proper enactment the States continue to have the right to segregate the white and colored races on public carriers. That Congress probably will not enter this field is evidenced by the fact that since January 5, 1938, for more than seven years it has refused to act, though at each session since then it has had the subject before it and has been urged to abolish segregation.

Our conclusion is that the statute challenged is a reasonable police regulation and applies to both intrastate and interstate passengers. It is not obnoxious to the commerce clause of the Constitution.

The judgment is affirmed.

Affirmed.

[fol. 78] In Supreme Court of Appeals of Virginia

Record No. 2974

Irene Morgan, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error

Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of Middlesex county on the 18th day of October, 1944.

Judgment—June 6, 1945

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore considered that the same be affirmed, and

that the plaintiff in error pay to the Commonwealth thirty dollars damages, and also her costs by her expended about her defense herein.

Which is ordered to be certified to the said circuit court.

IN SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

RECITAL AS TO FILING OF PETITION FOR REHEARING—July 2, 1945

The petition of plaintiff in error in this cause for a rehearing of the judgment of this court rendered on the 6th day of June, 1945, was this day received and the filing thereof is here noted of record.

IN SUPREME COURT OF APPEALS OF VIRGINIA

ORDER DENYING PETITION FOR REHEARING—September 4, 1945

On mature consideration of the petition of the plaintiff [fol. 79] in error to set aside the judgment entered herein on the 6th day of June, 1945, and grant a rehearing thereof, the prayer of the said petition is denied.

[fol. 80] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS

To the Honorable Preston W. Campbell, Chief Justice of the Supreme Court of Appeals of Virginia:

Now comes Irene Morgan, appellant in the above-entitled cause, by her attorneys, and respectfully shows that:

On the 6th day of June, 1945, in the above-entitled cause, the Supreme Court of Appeals of Virginia, the highest Court of said State in which a decision in said cause could be had, rendered a judgment against appellant and in favor of appellee, affirming a judgment of the Circuit Court of the

County of Middlesex, Virginia, designated as Case No. 330, in which judgment said Circuit Court convicted appellant of a violation of the statute of the State of Virginia known and designated as Chapter 128, Acts of Assembly of 1930, pages 343-344, and sentenced her to pay a fine of Ten ($10.00) Dollars.

On the 2nd day of July, 1945, appellant filed with the Supreme Court of Appeals of Virginia her Petition for Rehearing, which Petition was denied by said Court on the 4th day of September, 1945, whereupon the judgment of said Court became final. In the record and proceedings and in the rendition of said judgment, and in permitting the same to become final, manifest error occurred greatly to appellant's damage, whereby appellant is aggrieved and does hereby appeal from said judgment to the Supreme [fol. 81] Court of the United States.

In the record and proceedings and in the rendition of said judgment there was drawn in question by appellant herein the validity of the above-cited statute of the State of Virginia under which she was convicted, on the ground that said statute was in contravention of, and repugnant to, the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States, which confers upon the Congress the exclusive right to regulate commerce among the several States. The decision and judgment of the Supreme Court of Appeals of Virginia were in favor of the validity of said statute and against the rights, privileges and exemptions specifically set up and claimed by appellant herein under said clause of the Constitution of the United States, all of which is fully apparent in the record and proceedings of the cause and in the rendition of said decision and judgment.

Assignment of Errors

Appellant assigns the following errors in the record and proceedings of said cause:

I

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the statute of the State of Virginia, known as Chapter 128, Acts of Assembly of 1930, pages 343-344, as applied to appellant, a passenger traveling on an interstate

journey in a vehicle moving in interstate commerce, is not repugnant to the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States.

II

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit [fol. 82] Court of the County of Middlesex, Virginia, holding that the powers reserved to the States under the tenth Amendment of the Constitution of the United States include the power to enforce a State statute compelling the racial segregation of passengers on public carriers against a person traveling on an interstate journey in a vehicle moving in interstate commerce.

PRAYER FOR REVERSAL

For which errors appellant prays that the said decision and judgment of the Supreme Court of Appeals of Virginia in the above-entitled cause be reviewed by the Supreme Court of the United States, that the appeal herein operate as a supersedeas and suspension of the judgment of the Circuit Court of Middlesex County, Virginia, that the said decision and judgment of the Supreme Court of Appeals of Virginia be reversed, and that a judgment be rendered in favor of appellant.

Irene Morgan, Appellant, By William H. Hastie, Thurgood Marshall, Spottswood W. Robinson, III, Counsel for Appellant.

Spottswood W. Robinson, III, Consolidated Bank Building, Richmond, 19, Virginia.

[fols. 83-84] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—November 19, 1945

Irene Morgan, the appellant in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment rendered and entered in the above entitled cause by the Supreme Court of Appeals of Virginia, and having, on

the 19th day of November, 1945, duly presented and filed her Petition for Appeal and Assignment of Errors and Prayer for Reversal therein contained, and a Statement as to Jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided, and the same having been considered:

It is ordered that an appeal be and hereby is allowed to the Supreme Court of the United States from the Supreme Court of Appeals of Virginia as prayed in said petition, and that the Clerk of the Supreme Court of Appeals of Virginia shall prepare and certify a transcript of the record and proceedings in the above-entitled cause and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that bond for costs on appeal be and the same hereby is fixed in the sum of 200 Dollars, and that upon approval of bond in said amount the appeal herein shall operate as a supersedeas and suspension of the judgment of the Circuit Court of the County of Middlesex, Virginia, entered in the above-entitled cause.

Dated this 19th day of November, 1945.

Harlan F. Stone, Chief Justice of the United States.

[fol. 84a] Bond on appeal for $200.00 approved. Omitted in printing.

[fol. 85] Citation in usual form showing service on M. Ray Doubles. Omitted in printing.

[fol. 86] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of said Court:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal in the above-styled cause, and to

include in said transcript of record the following papers and exhibits, to-wit:

1. All the original record in the Supreme Court of Appeals of Virginia, on writ of error to the Circuit Court of the County of Middlesex, Virginia.

2. The opinion of the Supreme Court of Appeals of Virginia, rendered June 6, 1945.

3. The judgment of the Supreme Court of Appeals of Virginia, entered June 6, 1945, affirming the judgment of the Circuit Court of the County of Middlesex, Virginia.

4. The certificate of the Clerk of the Supreme Court of Appeals of Virginia noting the filing of the petition for rehearing.

5. The judgment of the Supreme Court of Appeals of Virginia, rendered September 4, 1945, denying the petition for rehearing.

6. The petition for appeal to the Supreme Court of the United States, including the assignment of errors and the prayer for reversal.

7. The statement of Irene Morgan, Appellant, in support of the jurisdiction of the Supreme Court of the United [fol. 87] States to review the above-styled cause on appeal.

8. The order of the Supreme Court of the United States allowing appeal and fixing the amount of bond.

9. The notice directing attention of appellee to the provisions of Rule 12, paragraph 3, of the rules of the Supreme Court of the United States, with acknowledgement of service of said notice and acknowledgement of service of copies of the petition for appeal and assignment of errors, order allowing the appeal, and statement in support of jurisdiction.

10. The citation on appeal to the Commonwealth of Virginia, and the certificate of service thereof upon the Commonwealth of Virginia.

11. The bond for costs on appeal and approval thereof.

12. This praecipe, with acknowledgement of service thereof.

13. Certificate of the Clerk of the Supreme Court of Appeals of Virginia to the correctness of the record as to this praecipe.

The said transcript is to be prepared as required by law and the rules of the Supreme Court of Appeals of Virginia and the rules of the Supreme Court of the United States,

and is to be filed in the Office of the Clerk of the Supreme Court of the United States within forty (40) days from the 19th day of November, 1945.

Irene Morgan, Appellant, by William H. Hastie, Spottswood W. Robinson, III, of Counsel for Appellant.

Due and legal service of the above praecipe is hereby acknowledged and accepted, and all other and further service is hereby waived.

This 6th, day of December, 1945.

Abram P. Staples, Atty. Gen. of Virginia, by M. Ray Doubles, Asst. Atty. Gen. of Virginia.

[fol. 88] Clerk's certificate to foregoing transcript omitted in printing. (Seal.)

[fol. 89] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF RECORD—Filed January 5, 1946

Pursuant to Rule 13, page 9 of the Revised Rules of this Court, appellant states that she intends to rely upon all the points in her Assignment of Errors.

Appellant deems the entire record as filed in the above entitled cause, necessary for consideration of the points relied upon, except for the following parts of the record which are not essential and may be omitted from the record to be printed by the Clerk of the Supreme Court of the United States.

1. Those portions of the Petition for Writ of Error entitled "Statement of the Facts" and "Argument" beginning at page 3 and ending in the middle of page 22 of the record as filed and printed in the Supreme Court of Appeals of Virginia.

2. The "Record of Case 331. File 40," beginning near the bottom of page 52 and ending in the middle of page 54

of the record as filed and printed in the Supreme Court of Appeals of Virginia.

William H. Hastie, Spottswood W. Robinson, III,
Attorney for Appellant.

Service acknowledged this 29th day of December, 1945.
Abram P. Staples, Attorney for Appellee.

[fol. 89a] [File endorsement omitted.]

[fol. 90] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed January 4, 1946

The appellee, Commonwealth of Virginia, designates the following additional parts of the record as filed which it thinks are necessary for the consideration of appellant's assignments of error, to-wit:

Record from Supreme Court of Appeals of Virginia.

All parts of the said Record omitted in the appellant's designation, viz.:

1. Those portions of the Petition for Writ of Error entitled "Statement of the Facts" and "Argument" beginning at page 3 and ending in the middle of page 22 of the Record as filed and printed in the Supreme Court of Appeals of Virginia.

[fol. 91] 2. The "Record of Case 331. File 40", beginning near the bottom of page 52 and ending in the middle of page 54 of the Record as filed and printed in the Supreme Court of Appeals of Virginia.

Commonwealth of Virginia, by Abram P. Staples,
Attorney General of Virginia and Counsel for Appellee.

Service of the foregoing statement of designation of additional parts of the Record the appellee thinks necessary for the consideration of the assignments of error relied on by the appellant is hereby accepted, and the receipt of a

copy thereof is hereby acknowledged for and on behalf of the appellant this 29th day of December, 1945.

Spottswood W. Robinson, III, Attorney for Appellant.

[fol. 91a] [File endorsement omitted.]

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—January 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson and Mr. Justice Rutledge took no part in the consideration of this question.

Endorsed on Cover: File No. 50,407. Virginia, Supreme Court of Appeals. Term No. 704. Irene Morgan, Appellant, vs. Commonwealth of Virginia. Filed December 29, 1945. Term No. 704 O. T. 1945.

FILE COPY

Office - Supreme Court, U. S.
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DEC 29 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA

STATEMENT AS TO JURISDICTION

WILLIAM H. HASTIE,
THURGOOD MARSHALL,
SPOTTSWOOD W. ROBINSON, III,
Counsel for Appellant.

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Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 200, 289 Fed. 598 12

Statutes Cited

Constitution of the United States:
Article I, Section 8 5
14th Amendment 5
Michie's Code of Virginia, 1942:
Section 4097z 2
Section 4097aa 2
Section 4097bb 2, 3
Section 4097cc 2, 3
Section 4097dd 2, 3, 4
United States Code, Title 28:
Section 344a 1
Section 861a 1

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA,

Appellee

STATEMENT IN SUPPORT OF JURISDICTION

The appellant, Irene Morgan, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully shows:

I

Jurisdictional Statute

The Supreme Court of the United States has jurisdiction to review this case on appeal under the provisions of Sections 344 (a) and 861 (a) of Title 28 of the United States Code because the highest court of the State of Virginia has rendered final judgment in this suit sustaining the validity of a criminal statute of the State after the validity of that statute had been brought into question by the person prose-

cuted thereunder, appellant here, on the ground of its being repugnant to the Constitution of the United States.

II

Statute of Virginia, the Validity of Which Is Involved

In 1930, the General Assembly of Virginia enacted a statute described by its title as "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." (Acts of Assembly, 1930, Chap. 128, Pages 343-344.)

This statute, now appearing as Sections 4097z to 4097dd of Michie's Code of Virginia, 1942, requires all passenger motor vehicle carriers to separate the white and colored passengers in their motor busses, and to set apart and designate in each bus seats or portions thereof to be occupied, respectively, by the races, and constitutes the failure and refusal to comply with said provisions a misdemeanor (Sec. 4097z); forbids the making of any difference or discrimination in the quality or convenience of the accommodations so provided (Sec. 4097aa); confers the right and obligation upon the driver, operator or other person in charge of such vehicle, to change the designation so as to increase or decrease the amount of space or seats set apart for either race at any time when the same may be necessary or proper for the comfort or convenience of passengers so to do; forbids the occupancy of contiguous seats on the same bench by white and colored passengers at the same time; authorizes the driver or other person in charge of the vehicle to require any passenger to change his or her seat as it may be necessary or proper, and constitutes the

failure or refusal of the driver, operator or other person in charge of the vehicle, to carry out these provisions a misdemeanor (Sec. 4097bb); constitutes each driver, operator or other person in charge of the vehicle, while actively engaged in the operation of the vehicle, a special policeman, with all of the powers of a conservator of the peace in the enforcement of the provisions of this statute, the maintenance of order upon the vehicle, and while in pursuit of persons for disorder upon said vehicle, for violating the provisions of the act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer, and protects him against the consequences of error in judgment as to the passenger's race, where he acts in good faith and the passenger has failed to disclose his or her race (Sec. 4097cc). Section 4097dd, upon which the prosecution in this case was based, reads as follows:

> "All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require; pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other con-

servator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court." (The full text of the statute involved is set forth in Appendix A attached hereto.)

III

Dates of Judgment and of Application for Appeal

The date of the judgment of the Supreme Court of Appeals of Virginia which is now sought to be reviewed was June 6, 1945. Appellant filed a timely Petition for Rehearing and this Petition was denied on September 4, 1945. Application for Appeal was duly presented on November 19, 1945, and the Appeal was allowed on November 19, 1945.

IV

Nature of the Case and Rulings in the State Courts

The appellant was tried in the Circuit Court of the County of Middlesex, Virginia, upon an amended warrant charging that on the 16th day of July, 1944, she did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd." She was found guilty, by the trial judge sitting without a jury and on October 18, 1944, was sentenced to pay a fine of $10.00. There is no substantial dispute concerning the facts with reference to this charge. On July 16, 1944, appellant, who is a Negro (R. 30, 39), was a passen-

ger on a bus of the Richmond Greyhound Lines, Inc., traveling from Hayes Store in Gloucester County, Virginia, to Baltimore, Maryland (R. 30, 39), on a through ticket purchased by her from said company (R. 32, 33, 39). The vehicle itself was traveling on a continuous and through trip from Norfolk, Virginia to Baltimore, Maryland, via Washington, D. C. (R. 32). During this journey, at Saluda, Virginia, the driver of the bus, a regular employee of the Richmond Greyhound Lines, Inc., in charge and control of the bus (R. 30, 32, 39) directed appellant to remove from the seat which she was occupying in the front of the bus to a seat in the rear pursuant to a design to segregate white and colored passengers in accordance with the herein and above-cited statute of Virginia. Appellant refused to move, whereupon the driver procured a warrant and caused her to be arrested upon a charge of violating the segregation law and particularly section 4097dd, herein above quoted. Upon this charge she was tried and convicted.

In the trial court, appellant duly raised and preserved by appropriate exceptions her objection that the statute in question is invalid because it is repugnant to the Constitution of the United States. Specifically by motion to strike the evidence of the Commonwealth, by motion to set aside the decision and arrest the judgment of guilt, and by motion for a new trial, appellant duly asserted her claim that the statute in question could not be made applicable to this case without violation of Section 8 of Article 1 of the Constitution of the United States, and that the conviction of appellant under the circumstances of this case constituted a violation of her rights under the Fourteenth Amendment of the Constitution of the United States. Bill of Exception No. 2 (R. 48, 49), Bill of Exception No 3 (R. 49-50) and Bill of Exception No. 4 (R. 50-51) as signed by the trial

judge and embodying these matters, are in the following language:

"BILL OF EXCEPTION No. 2

"Be it remembered that on the trial of this case when the Commonwealth had completed its presentation of its evidence-in-chief and had rested, the defendant moved to strike all of the evidence of the Commonwealth and to dismiss the case upon the grounds that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the evidence of the Commonwealth, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article 1, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce.

"The Court overruled said motion, to which action of the Court the defendant thereupon excepted.

"At the conclusion of the case when both the Commonwealth and the defendant had rested, the defendant renewed her motion to strike all the evidence of the Commonwealth, and to dismiss the case, upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the

evidence both for the Commonwealth and the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article 1, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; and that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States. The Court overruled said motion, to which action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 2 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, (Seal)
Judge of the Circuit Court of Middlesex County."

"Bill of Exception No. 3

"Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial (said certificate and statement of testimony being contained and set forth at length in defendant's Bill of Exception No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to-wit: 'that the defendant did unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to

change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd.'

"Whereupon the defendant moved the Court that said judgment be set aside and a new trial be awarded the defendant, and that the Court arrest judgment therein and not pronounce the same, on the grounds that no judgment could lawfully be rendered against her in this case, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger was in violation of Article I, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must and should be construed as limited in its operation to passengers in intrastate commerce; that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States; and that said finding and verdict were contrary to the evidence, and lacking in evidence sufficient to support the same.

"The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 3 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, (Seal)
Judge of the Circuit Court of Middlesex County."

"Bill of Exception No. 4

"Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony

certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial (said certificate and statement of testimony being contained and set forth at length in the defendant's Bill of Exception No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to-wit: that the defendant did 'Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd.'

"Whereupon, and after the Court had overruled the defendant's motion to set aside said judgment, as set forth in detail in defendant's Bill of Exception No. 3, and asked to be read as if here inserted, the defendant moved the Court to award her a new trial, and that the Court arrest judgment therein and not pronounce the same, upon the same grounds and for the same reasons assigned in support of her prior motion to set aside the said judgment, as set forth at length in defendant's Bill of Exception No. 3, to which reference is hereby made for the grounds and reasons assigned in support of this her motion for a new trial, and asked to be read as if here inserted.

"The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 4 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, (Seal)
Judge of the Circuit Court of Middlesex County."

On writ of error to the Supreme Court of Appeals of Virginia, the issues thus raised were duly presented to said court by the following assignment of errors (R. 2-3):

"First: The action of the Court in overruling petitioner's motion, first made at the conclusion of the presentation of the Commonwealth's evidence-in-chief, to strike the evidence of the Commonwealth and dismiss the case upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to her as she was, as shown by the evidence, an interstate passenger travelling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; which motion was renewed and again overruled at the conclusion of the entire case after both the Commonwealth and your petitioner had rested.

"Bill of Exception No. 2, Record pp. 34-35.

"Second: The action of the Court in overruling petitioner's motion to set aside said Court's decision and judgment of her guilt of the aforesaid offense, and to award her a new trial, which motion was predicated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

"Bill of Exception No. 3, Record pp. 36-37.

"Third: The action of the Court in overruling petitioner's motion for a new trial, which motion was pred-

icated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said Court's decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

"Bill of Exception No. 4, Record pp. 38-39."

In the Supreme Court of Appeals of Virginia the decision of the trial court was affirmed by the judgment which is the subject of the present appeal. The following excerpts from the Opinion of the Supreme Court of Appeals (a full copy of which appears as Appendix B, attached hereto) show that these issues were considered and adjudicated and that the decision was in favor of the validity of the statute in question:

"There are two questions presented by the assignments of error. First, is the statute upon which the defendant was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional? * * * (184 Va. 28)

"Under the tenth amendment there is reserved to the States the right to exercise the police power. The State may enact legislation under the authority of the police power, even though such legislation may incidentally affect interstate commerce.

"The Virginia segregation statutes have been enacted under the police power of the State reserved to it in the tenth amendment to the U. S. Constitution. * * * (184 Va. 31)

"We are of the opinion the statute does not result in a discrimination against either the white or the Negro race, and that it does no violence to the fourteenth amendment to the U. S. Constitution." * * * (184 Va. 39)

"Our conclusion is that the statute challenged is a reasonable police regulation and applies to both intrastate and interstate passengers. It is not obnoxious to the commerce clause of the Constitution.

"The judgment is affirmed. * * *" (184 Va. 39)

V

Substantial Character of Questions Involved

The appellant respectfully shows that the questions involved in her appeal are of a substantial nature.

The decision of the state court in this case is in conflict with the doctrine of *Hall* v. *De Cuir*, 95 U. S. 485, and reaffirmation of the doctrine of that case in the opinion of Mr. Chief Justice Stone in *Southern Pacific Co.* v. *Arizona*, 65 Sup. Ct. 1516, decided June 18, 1945: "the commerce clause has been filed to invalidate local 'police power' enactments—regulating the segregation of colored passengers in interstate trains, *Hall* v. *De Cuir*" (65 Sup. Ct. at 1526).

The decision of the state court in this case is in conflict with the conclusion uniformly reached by the inferior courts of the United States and by the majority of state courts that statutes requiring the racial segregation of passengers on public carriers cannot be enforced as to passengers and vehicles moving in interstate commerce.

Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 290, 289 Fed. 598;

Thompkins v. *Missouri, K. & T. Ry. Co.* (C. C. A. 8th), 211 Fed. 391;

McCabe v. *Atchison, T. & S. F. Ry. Co.* (C. C. A. 8th), 186 Fed. 966;

Anderson v. *Louisville & N. R. Co.* (C. C. Ky.), 62 Fed. 46;

Brown v. *Memphis & C. R. Co.* (C. C. Tenn.), 5 Fed. 499;

State v. *Jenkins*, 124 Md. 376;

Hart v. *State*, 100 Md. 596;

Carrey v. *Spencer* (N. Y. Sup. Ct.), 36 N. Y. S. 886;

State ex rel. Abbott v. *Hicks*, 44 La. Ann. 770.

The consequence of such a decision is to create confusion and uncertainty in the administration and regulation of

passenger travel by public carrier throughout the country. The obvious immediate effect of this decision is to make Virginia an island wherein local statutory regulation controls the seating of interstate passengers, surrounded by states where the existence of any such power has heretofore been denied. The very journey of appellant here began in Virginia, subject to the rule of this case to proceed through the District of Columbia and into Maryland where a contrary rule of law has prevailed. See *Washington, B. & A. Electric R. Co.* v. *Waller, supra; State* v. *Jenkins, supra.*

More generally, eighteen states have enacted "Civil Rights Acts" prohibiting racial segregation in places of public accommodations: California, Colorado, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Washington, Wisconsin. Also Maine and New Hampshire.

On the other hand some thirteen states provide by statute for some measure of racial segregation of passengers on public carriers: Alabama, Arkansas, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

Unless the Supreme Court shall make clear in this case that these conflicting local statutes cannot be imposed upon interstate travel, serious and burdensome confusion must result. If Virginia is permitted in this case to refuse to be governed by the doctrine of *Hall* v. *De Cuir*, neither lawyers nor laymen, travelers nor carriers can have any assurance of what to expect or what to do with reference to travel through states with varying local policy on racial segregation. Even those states which have felt constrained to respect the mandate of *Hall* v. *De Cuir* must now consider themselves free to impose local notions of policy in this field if Virginia is permitted to do so.

VI

Cases Supporting Jurisdiction

Resort to and review in the Supreme Court of the United States has consistently been by and pursuant to the procedure of Appeal where statutory impositions of a state have been challenged as repugnant to the commerce clause. Most recently, in *Southern Pacific Co. v. Arizona, supra*, such a controversy was reviewed on appeal. Similar precedents are numerous. *Hall v. De Cuir, supra; South Covington & Cincinnati, Chicago & St. Louis Ry. Co. v. Illinois*, 177 U. S. 514; *St. Louis, San Francisco Railway Co., et al. v. Public Service Commission*, 261 U. S. 369; *Missouri, Kansas & Texas Ry. Co. of Texas, et al. v. Texas*, 245 U. S. 484; *St. Louis Southwestern Ry. Co. v. Arkansas*, 217 U. S. 136; *Davis v. Farmers Co-Operative Equity Co.*, 262 U. S. 312; *Seaboard Air Line Ry. Co. v. Blackwell*, 244 U. S. 310; see also *Kansas City Southern Ry. Co. v. Kaw Valley Drainage District*, 233 U. S. 75.

WHEREFORE, appellant respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal.

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APPENDIX "A"

"Chap. 218—An ACT to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law. (H. B. 264.)

Approved March 20, 1930

1. Be it enacted by the general assembly of Virginia, That all passenger motor vehicle carriers, operating under the provisions of chapter one hundred and sixty-one-a of the Code of Virginia, shall separate the white and colored passengers in their motor busses and set apart and designate in each bus or other vehicle, a portion thereof, or certain seats therein, to be occupied by white passengers, and a portion thereof or certain seats therein, to be occupied by colored passengers, and such company or corporation, person or persons that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor and upon indictment and conviction, shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense.

2. The said companies, corporations or persons so operating motor vehicle carriers shall make no difference or discrimination in the quality or convenience of the accommodations provided for the two races under the provisions of the preceding section.

3. The driver, operator or other person in charge of any motor vehicle above mentioned, shall have the right, and he is hereby directed and required at any time when it may be necessary or proper for the comfort and convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race; but no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time; and said driver, operator or other person in charge of the vehicle, may require any passenger to change

his or her seat as it may be necessary or proper; the driver, operator or other person in charge of said vehicle who shall fail or refuse to carry out the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense.

4. Each driver, operator or person in charge of any vehicle, in the employment of any company operating the same, while actively engaged in the operation of said vehicle, shall be a special policeman and have all of the powers of conservators of the peace in the enforcement of the provisions of this act, and in the discharge of his duty as special policeman, in the enforcement of order upon said vehicle; and such driver, operator or person in charge of said vehicle shall likewise have the powers of conservators of the peace and of special policemen while in pursuit of persons for disorder upon said vehicles, for violating the provisions of this act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer; and, acting in good faith, he shall be for the purposes of this chapter, the judge of the race of each passenger whenever such passenger has failed to disclose his or her race.

5. All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Further-

more, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

APPENDIX "B"

IN THE SUPREME COURT OF APPEALS OF VIRGINIA

Present: All the Justices.

Record No. 2974

IRENE MORGAN

v.

COMMONWEALTH OF VIRGINIA

Wytheville, Virginia, June 6, 1945

From the Circuit Court of the County of Middlesex. J. Douglas Mitchell, Judge

OPINION BY JUSTICE HERBERT B. GREGORY

The plaintiff in error was found guilty of a violation of section 4097dd of the Virginia Code (Michie), Acts 1930, p. 344, and fined $10 and costs. She attacks the judgment of the lower court upon the ground that the statute does not apply to her because she was an interstate passenger on an interstate bus and, if it does, it is unconstitutional.

The facts, briefly, are as follows: On July 16, 1944, the plaintiff in error, who will be hereinafter referred to

as the defendant, was a passenger upon a bus of the Richmond Greyhound Lines, Inc. She was a member of the Negro race, and had purchased a ticket at Hayes Store, in Gloucester county, Virginia, to Baltimore, Maryland. The bus on which she was riding was operated from Norfolk, Virginia, to Baltimore, Maryland. Upon arriving at Saluda, Middlesex County, Virginia, she was sitting in the second seat toward the front from the long seat in the extreme rear of the bus. There were two vacant spaces upon the long rear seat, and six white passengers were standing. The bus driver requested the defendant and her seatmate, another woman of the Negro race, to change their seats and occupy the two vacant spaces on the rear seat. The seatmate attempted to make the change but as she sought to arise she was pulled back by the defendant. The defendant refused to change her seat as requested. The bus driver explained to her the rules and regulations of the company as to seating colored and white passengers on buses, and informed her that he was required to seat white passengers from the front of the bus toward the rear and colored passengers from the rear of the bus forward.

Exhibit "A" sets forth the regulation of the company. It is in this language:

"T-22 RIGHTS RESERVED: This company reserves the right to refuse transportation to any and all persons for the following reasons:

"(c) This company reserves full control and discretion as to the seating of passengers and the right to change such seating at any time during the trip except on divisions or runs where specific seat reservations are made, in which case, passengers shall retain the seats assigned them unless same be contrary to any laws or governmental regulations."

Upon the refusal of the defendant to change her seat the driver of the bus caused a warrant to be sworn out for her. The sheriff and a deputy boarded the bus with the warrant and requested the defendant to change her seat. The sheriff attempted to read the warrant to her but she snatched

it out of his hand and threw it behind the seat. The woman seated beside the defendant moved but the defendant again refused to move, whereupon, the sheriff and his deputy arrested her and took her off the bus. When they attempted to remove her from the bus the defendant struck at the deputy but did not hit him. She kicked the sheriff three times on his leg, and reiterated that she would neither change her seat nor get off the bus. The officers placed her in jail.

In addition to being tried for a violation of sec. 4097dd, she was also tried at the same time for resisting arrest and found guilty upon that charge and adjudged to pay a fine of $100 and costs. She has not sought a writ of error to this judgment. The writ of error here is to the judgment of the court finding the defendent guilty of a violation of section 4097dd.

There are two questions presented by the assignments of error. First, is the statute upon which the defendent was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional? Second, should the statute upon which the defendent was prosecuted be construed as limited in its operation to passengers in interstate commerce, and therefore as inapplicable to the defendant?

The decisive questions present only questions of law. It is conceded by counsel for the defendant that the facts as found by the court below are binding upon the defendant.

Section 4097dd reads as follows:

"Violation by passengers; misdemeanor; ejection.—All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation, and requested to conform thereto,

shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

In 1930 the General Assembly of Virginia enacted the statute known as Chapter 128, found in the 1930 Acts at pages 343 and 344. The title of the Act is "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." The present Code sec. 4097dd is the latter portion of the Act.

The Act provides that all passenger motor vehicles operating under Chapter 161A of the Code shall segregate passengers according to color, and that any carrier failing to comply shall be fined.

The Act also provides that those so operating motor vehicles shall make no difference or distinction in the quality or convenience of the accommodations provided for the two races.

The Act further provides that the driver or operator or other person in charge of any motor vehicle above-mentioned shall have the right, and he is directed, to require at any time when it may be necessary or proper for the comfort or convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race, and that any driver or operator of a bus who shall fail or refuse to carry out the provisions of this section shall be guilty of a misdemeanor.

The Act further provides that the operator of such vehicle shall be a special policeman and have all the powers of a conservator of the peace in the enforcement of the provisions of the Act.

Then follows the latter portion of the Act now known as sec. 4097dd of the present Code (Michie), which has already been quoted.

It is conceded that on the bus upon which the defendant was riding there were provided equal facilities for both races, and that there was no difference or discrimination in the quality or convenience of the accommodations provided for the two races.

The Attorney General has made a motion to dismiss the writ of error, but the ultimate view of the court will render it unnecessary to pass upon that motion.

The public policy of the Commonwealth of Virginia, as expressed in the various legislative Acts, is and has been since 1900 to separate the white and Negro races on public carriers. As to railroads, see Acts of 1900, pages 236 and 237, carried in Michie's Code of 1942 as secs. 3962-3968; as to steamboats, see Acts of 1900, page 340, carried in Michie's Code 1942 as secs. 4022-4025; as to electric or street cars, see Acts of 1902-03-04, page 990, carried in Michie's Code 1942 as secs. 3978-3983, and as to motor vehicles see Act of 1930, pages 343 and 344, carried in Michie's Code of 1942 as secs. 4097z, 4097aa, 4097bb, 4097cc, and 4097dd.

So far as we are advised no case contesting the validity of any of these segregation Acts as applied to interstate passengers has been previously before this court, or any attempt made to repeal them.

Article I, sec. 8, clause 3, of the Constitution of the United States provides that Congress shall have the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." And Article 10 of the amendments to the Constitution of the United States provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Under the tenth amendment there is reserved to the States the right to exercise the police power. The State may enact legislation under the authority of the police power, even though such legislation may incidentally affect interstate commerce.

The Virginia segregation statutes have been enacted under the police power of the State reserved to it in the tenth amendment to the U. S. Constitution.

Unless it is shown that the statute here challenged directly or unreasonably interferes with interstate commerce it is a valid enactment. There is no evidence in this case that the rule of the carrier or the statute under which it was promulgated does so. The burden of proof on this issue rested upon the defendant and she has failed to carry it. *Bourjois v. Chapman*, 301 U. S. 183, 57 S. Ct. 691, 81 L. Ed. 1027.

It must be borne in mind that here the carrier is not contending that interstate commerce is unreasonably burdened by the statute. It does not contend that the statute places any added expenses upon it or that it is inconvenienced or that it is against peace and good order to separate the races as it does under its rule. In fact the carrier was not even a party to this litigation.

The general rule is that if the enactment which requires the segregation of races according to color directly or unreasonably interferes with commerce it is not constitutional. *Hall v. DeCuir*, 95 U. S. 485, 24 L. Ed. 547; *McCabe v. Atchison, etc., R. Co.*, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169. But unless the regulation unreasonably burdens commerce it is valid.

In *South Covington, etc., R. Co. v. Kentucky*, 252 U. S. 399, 40 S. Ct. 378, 64 L. Ed. 631, it was held that a Kentucky street railway may be required by statute of that State to furnish separate cars or separate compartments in the same car for white and Negro passengers, although its principal business is the carriage of pasengers in interstate commerce between Cincinnati, Ohio, and Kentucky cities across the Ohio river. It was held that such a requirement affects interstate commerce only incidentally and does not subject it to unreasonable demands.

It was also held in *Smith v. State*, 100 Tenn. (16 Pick.) 494, 46 S. W. 566, 41 L. R. A. 432; *Alabama, etc., R. Co. v. Morris*, 103 Miss. 511, 60 So. 11, Ann. Cas. 1915B, 613, and *Southern R. Co. v. Norton*, 112 Miss. 302, 73 So. 1, that State statutes providing for separate but equal accommodations for white and colored races on railroads are valid police regulations and that they apply both to intrastate and interstate travel. In these cases comment is made that the Supreme Court has not directly passed upon the validity of such statutes and that the ultimate settlement of the question rests with that court. It is also suggested in the *Morris Case* that until that court decides against the validity of such statutes, the court will be impelled to adhere to the belief that the law is not only beyond criticism from a constitutional standpoint but is also a reasonable and wise exercise of the police power of the State.

There are cases from several States which support the contention that a segregation statute is unconstitutional as respects interstate passengers. See *Hart v. State*, 100 Md. 595, 60 A. 457; *Carrey v. Spencer*, 72 N. Y. St. Rep. 108, 36 N. Y. S. 886; *Washington, etc., Elec. R. Co. v. Waller*, 53 App. D. C. 200, 289 F. 598, 30 A. L. R. 50. See also annotation in 30 A. L. R. at p. 55, where a number of cases are collected.

The defendant places strong reliance upon the case of *Hall v. DeCuir*, 95 U. S. 485, 24 L. Ed. 547. That case arose in 1877 under a Louisiana statute enacted in 1869 which required that no regulation of any carrier should make any discrimination on account of the race or color of the passenger. The plaintiff was a member of the Negro race and she sought accommodations on an intrastate journey in Louisiana on a steamboat operated by one Benson, which plied on the Mississippi river between New Orleans, Louisiana, and Vicksburg, Mississippi. She was refused accommodations in the cabin set apart for white persons, and sued Benson for damages as provided in the statute. He maintained that he was engaged in interstate commerce and that the Louisiana statute could have no application to him, and that he could promulgate any rules he desired. The Supreme Court of Louisiana held the statute applicable and

that it was not a regulation of interstate commerce. The case was appealed to the Supreme Court of the United States and there reversed, the Court holding that the statute was an unreasonable burden upon interstate commerce and therefore in violation of the Constitution.

The court found as a fact that the Louisiana Act was a direct interference with interstate commerce, while in the case at bar the challenged Act has not been shown nor found to be an interference with interstate commerce.

In the *Hall Case* it is apparent that the Louisiana Act was not enacted in pursuance of the police power of the State, while the Virginia Act was enacted under the police power.

It is also noted that the Louisiana statute prohibited the segregation of the races and that the rule of the carrier required such segregation, while in Virginia our statute not only requires separation of the races on public carriers but the carrier in this instance has a rule promulgated under the statute providing for the seating of passengers in the bus, and reserving to itself the right to change such seating at any time during the trip.

The Louisiana statute and the rule of the carrier were in direct conflict. To enforce the rule of the carrier would have been to violate the terms of the statute, while to enforce the terms of the statute would have been to violate the rule of the carrier. No such situation exists in Virginia. In the case at bar the rule of the carrier, instead of being at variance with the provisions of the statute, is entirely consistent with it—the rule having been made under the terms of the statute.

There is a conflict in the many cases dealing with State statutes which require the separation of the white and colored races by public carriers. No case from the Supreme Court of the United States has directly considered the issue raised in the case at bar. It is needless for us to refer to all of the cases or to attempt to discuss and distinguish them. Each case must largely depend upon its own facts, and if a statute results in imposing a direct or unreasonable burden upon interstate commerce it should be declared unconstitu-

tional. On the other hand, if it creates no such burden, it is not obnoxious to the Constitution.

In 11 Am. Jur., Commerce, section 8, the rule controlling the division and classification of powers is stated thus:

"The constitutional provision which confers upon Congress the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes' grants all of the authority which the United States has over commerce. The respective powers of Congress and the States under this provision are divided into three fields: (1) That in which the authority of Congress is exclusive; (2) that in which the power of the State is exclusive; and (3) that in which the State may act in the absence of legislation by Congress. The line of division between Congressional and State Power over commerce is a question for judicial decision, depending upon the words of the Federal Constitution. * * *"

In *Covington, etc., Bridge Co. v. Kentucky*, 154 U. S. 204, 14 S. Ct. 1087, 38 L. Ed. 962, it was held that the adjudications of the Supreme Court of the United States with respect to the power of the States over the general subject of commerce are divisible into three classes: "First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the States cannot interfere at all."

In the case at bar the defendant contends that Congress possesses the exclusive power in matters relating to interstate commerce, and that the States cannot act at all, while the Attorney General contends that the case at bar falls within the second class set out in the *Covington Case*, and that the State may act in the absence of legislation by Congress.

It appears that certain members of Congress have attempted to induce Congress to invade the so-called segregation field, but so far without success. On three occasions it has expressly refused to legislate on the subject. On January 5, 1938, Representative Mitchell introduced the following bill in Congress to amend U. S. C. title 49, sec.

3(1). (See H. R. 8821, Congressional Record, Vol. 83, part 1, p. 74):

"It shall be unlawful to segregate any persons traveling as interstate passengers on any carrier subject to the provisions of this Act, or in railroad stations, waiting rooms, rest rooms, lunch rooms, restaurants, dining cars, or in any other accommodations provided for passengers traveling interstate, on account of such passengers' race, color, or religion; and any such discrimination or attempted discrimination shall subject the offending carrier, its officers, agents, servants and employees, to the penalties hereinafter provided for violations of this Act."

This bill was referred to the Committee on Interstate and Foreign Commerce but was never reported out.

On January 3, 1939, the bill was re-introduced as H. R. 182, (Congressional Record, Vol. 84, part 1, p. 27), and again referred to the same committee. This committee was studying and developing the Interstate Commerce Act, and the Transportation Act of 1940, (Title 49 U. S. C. A., Transportation), was finally enacted, but the bill was not reported out nor were its provisions incorporated in any other measure.

On January 3, 1941, the bill was re-introduced as H. R. 112 (Congressional Record, Vol. 87, part 1, p. 13), and for the third time it was not reported out of committee.

There is now pending in the Committee on Interstate and Foreign Commerce a bill known as H. R. 1925, by which it is again sought to abolish segregation on public carriers. What the fate of this latest attempt will be, is, of course, not known.

This continued refusal of the Congress to legislate in the segregation field demonstrates its desire that the matter be left where it is now; that is, that the several States, under their police power, be permitted to continue to legislate in this field, subject only to the limitation that they shall not directly or unreasonably burden interstate commerce.

The Supreme Court has held that a State may tax interstate commerce even though it increases the cost of doing business. Even interstate business must pay its way. The

bare fact that one is carrying on interstate commerce does not relieve him from many forms of State taxation which add to the cost of his business.

In *McGoldrick v. Berwind-White Coal Min. Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A.-L. R. 876, Mr. Justice Stone, speaking for the Court said: "Section 8 of the Constitution declares that Congress shall have power * * * to regulate commerce with foreign nations and among the several States. * * * In imposing taxes for State purposes a State is not exercising any power which the Constitution has conferred upon Congress. It is only when the tax operates to regulate commerce between the States or with foreign nations to an extent which infringes the authority conferred upon Congress that the tax can be said to exceed constitutional limitations." Citing cases.

And again the Justice said: "In few of these cases could it be said with assurance that the local tax does not, in some measure, affect the commerce or increase the cost of doing it. But in them as in other instances of constitutional interpretation so as to insure the harmonious operation of powers reserved to the States with those conferred upon the national government, courts are called upon to reconcile competing constitutional demands, that commerce between the States shall not be unduly impeded by State action and that the power to lay taxes for the support of State government shall not be unduly curtailed."

Thus a State may tax interstate commerce and increase the costs of doing that business. Commerce is bound to be affected and burdened. However, under the case just referred to, as long as the State tax does not infringe the authority conferred upon Congress to regulate commerce among the several States, it is not invalid.

If State taxation statutes are constitutional even though they add to the cost of doing an interstate business, it would certainly seem logical that a segregation statute which is not shown to affect interstate commerce in any way, except perhaps to improve it, would also be valid. If the defendant here and her seatmate had complied with the rule of the carrier and had occupied the rear vacant seats assigned them, then two of the six white passengers could

have been seated. Thus complying with the rule of the carrier and the statute not only would not have directly or unreasonably impaired interstate commerce but it would have aided it.

It is conceded that in so far as the commerce clause is concerned the Virginia Act is valid, if restricted in its application to intrastate passengers. It is said that the Act is severable, and we are asked to so hold, and to invalidate it as to interstate passengers.

The language of the statute embraces all motor vehicles and all passengers, both interstate and intrastate. If the statute were held to be valid as to intrastate passengers and invalid as to interstate passengers, a condition would exist that would adversely disturb the peace and welfare. Then an interstate white passenger could occupy the rear seat with an intrastate Negro passenger, and an interstate Negro passenger could occupy a front seat with an intrastate white passenger. This would tend to confusion and disorder, and in effect, to allow the interstate Negro and white passengers to have the run of the entire bus, while confining the intrastate white and colored passengers to the front and rear of the bus, respectively. The result would be that the Segregation Act in its entirety would effectively be disrupted.

The point raised for the first time in the defendant's reply brief that the Act is not constitutional because it delegates legislative power to a private corporation brings into the case a question not raised in the pleadings in the court below or in the assignments of error or in the petition for the writ of error. It was not an issue in the case, and the attempt to inject it into the case for the first time by asserting it in the reply brief is violative of rule 22 of this court.

However, we do not think there would be any merit in the point if it had been properly raised. The statute, when read in its entirety, clearly demonstrates that no power is delegated to the carrier to legislate and determine what conduct shall be considered a crime. The statute simply describes conditions which must first be found to exist before it becomes applicable. There is no uncertainty about

the conditions that must exist before the offense is complete. The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier. An interesting and exhaustive annotation on "Permissible Limits of Delegation of Legislative Power" is found in 79 L. Ed. of the U. S. Supreme Court Reports, beginning at page 274, following the case of *Panama Refin. Co. v. Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446. At page 496 (79 L. Ed.) the specific point is discussed and the pertinent cases cited. They are: *Whaley v. State*, 168 Ala. 152, 52 So. 941, 30 L. R. A. (N. S.) 499; *Samuelson v. State*, 116 Tenn. (8 Cates) 470, 95 S. W. 1012, 115 Am. St. Rep. 805, and *In re O'Neill*, 41 Wash. 174, 83 P. 104, 3 L. R. A. (N. S.) 558, 6 Ann. Cas. 869.

In Virginia the statute demands equality of treatment of the white and Negro races by the carriers as well as equality in the facilities provided by the carriers for them. A statute which would permit inequalities in these respects would be invalid. Here the segregation statutes are enforced against the members of the white as well as against those of the Negro race. They must be enforced equally and without discrimination against both races. *Davis v. Commonwealth*, 182 Va. 760, 30 S. E. (2d) 709.

We are of the opinion the statute does not result in a discrimination against either the white or the Negro race, and that it does no violence to the fourteenth amendment to the U. S. Constitution (See *Plessy v. Ferguson*, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256).

The silence of Congress on this subject places it in the "second" category outlined in *Covington, etc., Bridge Co. v. Kentucky, supra*, where the State is allowed to act in the absence of legislation in this field by Congress. If Congress desires to nullify State segregation statutes as applicable to interstate passengers it has the power to do so under the commerce clause. However, until Congress pre-empts this legislative field by proper enactment the States continue to have the right to segregate the white and colored races on public carriers. That Congress probably will not enter this field is evidenced by the fact that since January 5, 1938, for more than seven years it has refused to act

though at each session since then it has had the subject before it and has been urged to abolish segregation.

Our conclusion is that the statute challenged is a reasonable police regulation and applies to both intrastate and interstate passengers. It is not obnoxious to the commerce clause of the Constitution.

The judgment is affirmed.

Affirmed.

(2181)

FILE COPY

Supreme Court U. S.
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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA.

BRIEF FOR APPELLANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA.

BRIEF FOR APPELLANT

Opinion Below

The opinion of the Supreme Court of Appeals of Virginia appears in the record (R. 56-68) and is reported in 184 Va. 24, 34 S. E. (2d) 491.

Jurisdiction

The Supreme Court of the United States has jurisdiction to review this case on appeal under the provisions of Section 344 (a) and 861 (a) of Title 28 of the United States Code because the highest court of the State of Virginia has rendered final judgment in this suit sustaining the validity of a criminal statute of the State of Virginia after the validity of the statute had been drawn into question by the appellant prosecuted thereunder, on the ground of its being repugnant to the Constitution of the United States.

The date of the judgment of the Supreme Court of Appeals of Virginia which is now being reviewed was June 6, 1945 (R. 68). Appellant filed a timely Petition for Rehearing (R. 69), and this Petition was denied on September 4, 1945 (R. 69). Application for Appeal was duly presented on November 19, 1945 and allowed on the same day (R. 72). Probable jurisdiction was noted by this Court on January 28, 1946 (R. 76).

Summary Statement of Matter Involved

1. Statement of the Case

The appellant was tried in the Circuit Court of the County of Middlesex, Virginia, upon an amended warrant charging that on the 16th day of July, 1944, she did "unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of Section 5 of the Act, Michie Code of 1942, Section 4097dd"* (R. 27). She was found guilty by the trial judge sitting without a jury and on October 18, 1944, was sentenced to pay a fine of $10.00 (R. 54-55).

In the trial court, appellant duly raised and preserved by appropriate exceptions her objection that the statute in question is invalid because it is repugnant to the Constitution of the United States. Specifically by motion to strike the evidence of the Commonwealth (R. 39, 48), by motion to set aside the decision and arrest the judgment of guilt (R. 50-51), and by motion for a new trial (R. 52), appellant duly asserted her claim that the statute in question could not be made applicable to this case without violation of

* The statute is set out in full in the record (R. 7-9).

Section 8 of Article I of the Constitution of the United States, and that the conviction of appellant under the circumstances of this case constituted a violation of her rights under the Fourteenth Amendment of the Constitution of the United States.

On writ of error to the Supreme Court of Appeals of Virginia the assignment of errors again set forth appellant's claim that the statute under which she was convicted could not be applied to her without violating Article I, Section 8 of the Constitution of the United States (R. 1-2). The Supreme Court of Appeals of Virginia affirmed the judgment of the trial court and in its opinion considered and adjudicated the issues raised in favor of the validity of the statute in question as applied to appellant.

2. Statement of Facts

On July 16, 1944, appellant, who is a Negro, was a passenger on a bus of the Richmond Greyhound Lines, Inc., traveling from Hayes Store in Gloucester County, Virginia, to Baltimore, Maryland (R. 31, 40), on a through ticket purchased by her from said company (R. 33, 34, 40). The bus was traveling on a continuous and through trip from Norfolk, Virginia, to Baltimore, Maryland, via Washington, D. C. (R. 32-33). During this journey, at Saluda, Virginia, the driver of the bus, a regular employee of the bus company in charge and control of the bus, directed appellant to move from the seat which she was occupying (in front of the rear seat) to the rear of the bus pursuant to a design to enforce the segregation of white and colored passengers in accordance with the requirement of the Virginia segregation law and particularly Section 4097dd of Michie's Code of Virginia (R. 31, 32, 40-41). Appellant refused to move, whereupon the driver procured a warrant and caused her

to be arrested upon a charge of violating the above statute. There is no dispute concerning the above facts.

3. The Applicable Statute and Its Construction

In 1930, the General Assembly of Virginia enacted a statute described by its title as "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." (Acts of Assembly, 1930, Chap. 128, pages 343-344.)

This statute, now appearing as Sections 4097z to 4097dd of Michie's Code of Virginia, 1942, requires all passenger motor vehicle carriers to separate the white and colored passengers in their motor busses, and to set apart and designate in each bus seats or portions thereof to be occupied, respectively, by the races, and constitutes the failure or refusal to comply with said provisions a misdemeanor (Sec. 4097z); forbids the making of any difference or discrimination in the quality or convenience of the accommodations so provided (Sec. 4097aa); confers the right and obligation upon the driver, operator or other persons in charge of such vehicle, to change the designation of seats so as to increase or decrease the amount of space or seats set apart for either race at any time when the same may be necessary or proper for the comfort or convenience of passengers so to do; forbids the occupancy of contiguous seats on the same bench by white and colored passengers at the same time; authorizes the driver or other person in charge of the vehicle to require any passenger to change his or her seat as it may be necessary or proper, and constitutes the failure or refusal of the driver, operator or other person in charge of the vehicle to carry out these provisions a mi-

demeanor (Sec. 4097dd); constitutes each driver operator or other person in charge of the vehicle a special policeman, with all of the powers of a conservator of the peace in the enforcement of the provisions of this statute, the maintenance of order upon the vehicle and while in pursuit of persons for disorder upon said vehicle, for violating the provisions of the act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer, and protects him against the consequences of error in judgment as to the passenger's race, where he acts in good faith and the passenger has failed to disclose his or her race (Sec. 4097cc).

Section 4097dd upon which the prosecution in this case was based, provides that all persons who fail to take seats assigned to them by the driver or other person assigned to take up tickets or who fail to obey the directive of the driver to change seats pursuant to rules and regulations of the company designed to accomplish the segregation of the races as required by the statute, having been first advised of the rule or regulation, shall be guilty of a misdemeanor; it is also provided that such person may be ejected from the bus by any driver or other conservator of the peace without return of fare paid, and neither the driver nor the bus company shall be liable for damages for such ejection. The statute is set out in full in Appendix A to this brief.

The Supreme Court of Appeals of Virginia in affirming the conviction of appellant decided that the statute in question applied to both interstate and intrastate passengers (R. 56, 68). The statute involved requires all motor vehicles to segregate passengers according to race regardless of the effect upon interstate commerce or hardship to carrier and passenger.

Carriers of passengers are precluded by this statute from exercising judgment or discretion in seating arrangements. The rules and regulations of the carrier involved were required by the statutes of Virginia. The lower court in its opinion, expressly stated: "The statute, when read in its entirety, clearly demonstrates that no power is delegated to the carrier to legislate and determine what conduct shall be considered a crime. The statute simply describes conditions which must first be found to exist before it becomes applicable. There is no uncertainty about the conditions that must exist before the offense is complete. *The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier*" (R. 67). (Italics ours.)

In this view of the case it is understandable that the appellee made no effort to justify the rules and regulations of the bus company on the basis of reasonableness or necessity other than the requirements of the statutes of Virginia. For all intents and purposes this case stands as if the rules and regulations adopted pursuant to the statute became a part of the statute itself.

Errors Relied Upon

I

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the statute of the State of Virginia, known as Chapter 128, Acts of Assembly of 1930, pages 343-344, as applied to appellant, a passenger traveling on an interstate journey in a vehicle moving in interstate commerce, is not repugnant to the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States.

II

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the powers reserved to the States under the Tenth Amendment of the Constitution of the United States include the power to enforce a state statute compelling the racial segregation of passengers on public carriers against a person traveling on an interstate journey in a vehicle moving in interstate commerce.

Summary of Argument

For seventy years the decisions and pronouncements of this Court have consistently condemned state statutes attempting to control or require the segregation of Negro passengers moving in interstate commerce on public carriers as unconstitutional invasions of an area where national power under the commerce clause is exclusive. Unless the reasoning of those cases was or is unsound, they should be followed.

The nature of the subject matter, the direct impact of segregation statutes on the interstate movement of persons in commerce, and the burdensome and disruptive effect of numerous and conflicting local enactments in this field all indicate the correctness of the doctrine which places this aspect of interstate commerce beyond state control. The transitory status of the interstate passenger and the lack of any uniform or consistent coverage of Negro travelers in the segregation laws of the several states, including Virginia, show the unsubstantial character of the State's claim of legitimate concern with this matter. Such capricious application of provincial notions beyond substantial local needs affords no valid basis for the regulation of interstate commerce which Virginia is attempting.

ARGUMENT

I

This Court Has Consistently Asserted That States Do Not Possess the Authority Which Virginia Now Asserts

That a state statute seeking to impose a local policy concerning racial segregation upon the interstate transportation of passengers on public carriers contravenes the commerce clause was clearly and decisively established by this Court in *Hall* v. *DeCuir*.[1] The state statute there challenged was construed as guaranteeing to passengers in interstate commerce equal rights and privileges in all parts of public conveyances without discrimination on account of race or color. This Court concluded that state regulation of this subject matter was inconsistent with the commerce clause. Great emphasis was placed upon the burdensome effect of diverse regulations in states with conflicting notions of racial policy.

The considerations which determined the invalidity of the statute in *Hall* v. *DeCuir* operate equally to render invalid legislation which seeks to compel a separation of interstate passengers upon a racial basis. It was the very fact that one state may attempt to segregate interstate passengers in some fashion while an adjoining state may prohibit such segregation which compelled the Court to declare this entire subject matter beyond the reach of local law.

Analysis of the cases which have brought various aspects of racial segregation in commerce before this Court since

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[1] 95 U. S. 485.

Hall v. *DeCuir* reveals consistent recognition and application of the doctrine of that case. *Louisville, N. O. & T. Ry. Co.* v. *Mississippi*,[2] involved the 1888 statute of Mississippi which required railroads operating within the state to provide separate but equal accommodations for white and colored passengers. The Supreme Court of Mississippi had construed the statute as applying only to intrastate commerce. This Court discussed and reasserted the principle of *Hall* v. *DeCuir* and made it plain that, had the statute before it been held applicable to interstate commerce, it would have been invalid.

The 1890 Louisiana statute, requiring separate but equal accommodations for the white and colored races on railroads, was in question in *Plessy* v. *Ferguson*.[3] The state court had limited the operation of the law to intrastate commerce, and the argument centered around constitutional provisions other than the commerce clause. The Court discussed *Hall* v. *DeCuir*, and pointed out that in the latter case the vice of the statute was that it affected interstate commerce, thus indicating that the decision in the *Plessy* case would have been different had the statute involved extended to interstate passengers.

In more recent cases concerning segregation in transportation, *Chesapeake & O. Ry. Co.* v. *Kentucky*,[4] *Chiles* v. *Chesapeake & Ohio Ry. Co.*,[5] and *McCabe* v. *Atchison, Topeka and Santa Fe Ry. Co.*,[6] this Court discussed *Hall* v. *DeCuir* and reaffirmed and restated with approval the reasoning of that case.

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[2] 133 U. S. 587.
[3] 163 U. S. 537.
[4] 179 U. S. 388.
[5] 218 U. S. 71.
[6] 235 U. S. 151.

In *South Covington & C. St. Ry. Co.* v. *Kentucky*,[7] defendant, a Kentucky corporation, had been authorized by its charter to operate a street railway in and around Covington, Kentucky, and to acquire and operate any other street railway in that vicinity which included the City of Cincinnati, Ohio. Defendant became the owner of all of the stock of another Kentucky corporation, herein designated as the "C" Company, authorized to construct and maintain an electric railroad between Covington and Erlanger, Kentucky, and beyond. Both companies were operated under the same management and under the "C" Company's name. A fare of five cents was charged for passage upon any point on the road of the "C" Company to any point on the system of the defendant, and transfers were given for all connecting lines. Many persons taking passage on the line of the "C" Company in Kentucky were transported without change of cars into Cincinnati over defendant's line. Each terminus, as well as each of the stations, of the "C" Company, was in Kentucky. Defendant was indicted and convicted for failure to comply with the Kentucky statute requiring separate but equal accommodations for the races, in a car which operated out of Cincinnati but continued through and beyond Covington, with its Kentucky run over the "C" Company route. The defense was that the principal business of defendant was interstate in character, and that the statute could not validly apply to it. However, the Court of Appeals of Kentucky held that the defendant's operation over the line of the "C" Company was a distinct enterprise within Kentucky to which Kentucky law applied, pointing out at the same time that the statute had no application to the transportation of interstate passengers,[8] and on this basis affirmed the conviction. This Court made a

[7] 252 U. S. 399.
[8] 181 Ky. 449, 205 S. W. 603.

similar analysis of the situation and affirmed the judgment. In the majority opinion it was made plain that the Justices regarded the subject matter upon which the statute operated as intrastate rather than interstate commerce.[9] Mr. Justice DAY, writing for the three dissenting Justices, pointed out explicitly that

> "It is admitted that this regulation would not apply to interstate passengers, and colored passengers going from Kentucky to Cincinnati, or going from Cincinnati to Kentucky on a through trip would not be subject to the regulation."[10]

Not only has *Hall* v. *DeCuir* been approved upon those occasions where this Court has been faced with state laws concerning racial segregation of passengers, but the decision has frequently been relied upon *arguendo* in cases wherein some analogical application of doctrine seemed appropriate with respect to other types of state legislation.[11] Most recently, in *Southern Pacific Co.* v. *Arizona*,[12] decided June 18, 1945, this Court stated that "the commerce clause has been held to invalidate local 'police power' enactments—regulating the segregation of colored passengers in interstate trains, *Hall* v. *DeCuir*."

The decisions of other courts likewise reflect substantial agreement that state laws of the kind involved in the in-

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[9] 252 U. S. at 403, 404.

[10] 252 U. S. at 407.

[11] *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 310; *South Covington & C. St. Ry. Co.* v. *Covington*, 235 U. S. 537, 548; *Minnesota Rate Cases*, 230 U. S. 352, 401; *Hanley* v. *Kansas City Southern Ry. Co.*, 187 U. S. 617, 620; *Louisville & N. R. Co.* v. *Eubank*, 184 U. S. 27, 40; *Cleveland, C. C. & St. L. Ry. Co.* v. *Illinois*, 177 U. S. 514, 518; *Rhodes* v. *Iowa*, 170 U. S. 412, 424; *Covington & C. Bridge Co.* v. *Kentucky*, 154 U. S. 204, 215; *Bowman* v. *Chicago & N. W. R. Co.*, 125 U. S. 465, 486; *Western Union Tel. Co.* v. *Pendleton*, 122 U. S. 347, 357; *Wabash, St. L. & P. Ry. Co.* v. *Illinois*, 118 U. S. 557, 565.

[12] 325 U. S. 761.

stant case cannot constitutionally be applied to passengers traveling in interstate commerce. This conclusion has been reached in all of the inferior federal courts which have considered the matter,[13] and in a majority of the state courts as well.[14] Analysis of these cases reveals consistency in recognition of the basic considerations underlying the decision in *Hall* v. *DeCuir*, that the national interest in the freedom of interstate commerce from diverse and conflicting requirements as to rearrangement of passengers must prevail over local notions of racial policy.

The rationale of this entire line of decisions is so clearly spelled out in *Hart* v. *State*, that quotation from that opinion seems appropriate:

> "Although the state has power to adopt reasonable police regulations to secure the safety and comfort of passengers on interstate trains while within its borders, it is well settled, as we have seen, that it can do nothing which will directly burden or impede the interstate traffic of the carrier, or impair the usefulness of its facilities for such traffic. When the subject is national in its character and admits and requires uniformity of regulation affecting alike all the states, the power is in its nature exclusive, and the state cannot act. The failure of Congress to act as to matters of national character is, as a rule, equivalent to a declaration that they shall be free from regulation or restriction by any statutory enactment, and it is well settled that interstate com-

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[13] *Washington, B. & A. Ry.* v. *Waller*, 53 App. D. C. 200, 289 Fed. 598; *Tompkins* v. *Missouri, K. & T. Ry.*, 211 Fed. 391 (C. C. A. 8th); *Anderson* v. *Louisville & N. R. Co.*, 62 Fed. 46 (C. C. Ky.); *Brown* v. *Memphis & C. R. Co.*, 5 Fed. 499 (C. C. Tenn.).

[14] *State ex rel. Abbott* v. *Hicks*, 44 La. Ann. 770, 11 So. 74; *Hart* v. *State*, 100 Md. 595, 60 Atl. 457; *Carey* v. *Spencer*, 36 N. Y. Supp. 886; *State* v. *Galveston H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227; *Huff* v. *Norfolk-Southern R. Co.*, 171 N. C. 203, 88 S. E. 344. Contra: *Illinois Central R. Co.* v. *Redmond*, 119 Miss. 765, 81 So. 115; *Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566.

merce is national in its character. Applying these general rules to the particular facts in this case, and bearing in mind the application of the expressions used in *Hall* v. *DeCuir* to cases involving questions more or less analogous to that before us, we are forced to the conclusion that this statute cannot be sustained to the extent of making interstate passengers amenable to its provisions. When a passenger enters a car in New York under a contract with a carrier to be carried through to the District of Columbia, if when he reaches the Maryland line, he must leave that car, and go into another, regardless of the weather, the hour of the day or the night, or the condition of his health, it certainly would, in many instances, be a great inconvenience and possible hardship. It might be that he was the only person of his color on the train, and no other would get on in the State of Maryland, but he, if the law is valid against him, must, as soon as he reaches the state line, leave the car he started in, and go into another, which must be furnished for him, or subject himself to a criminal punishment. Or take, for illustration, the Cumberland Valley Railroad from Winchester, Va., to Harrisburg, Pa. In Virginia a law of this kind is in force, while in West Virginia and Pennsylvania there is none, as far as we are aware. On a train starting from Winchester the passengers must be separated according to their color for six or eight miles, when it reaches the West Virginia line, then through West Virginia they can mingle again until they reach the Potomac, when they would be again separated, and so continue until they reach Mason and Dixon's line, when they are again permitted to occupy cars without regard to their color. If the railroad company did not deem it desirable or proper to have separate compartments throughout the journey—and oftentimes it might be wholly unnecessary for the comfort of the passengers on said trains, as there might be very few colored persons on them—there would be at least three

changes in that short distance. We cannot say, therefore, that, as applied to interstate passengers, such a law as this would be so free from the objections pointed out in the cases above mentioned as to be sustained under the police powers of the states."[15]

The Commonwealth of Virginia is now asserting that the decision in *Hall* v. *DeCuir* and the impressive line of decisions and pronouncements following that case for seventy years and as recently as June, 1945, were ill considered.

II

Regulations Concerning Racial Segregation in Interstate Commerce Fall Within the Area of Exclusive National Power as Judicially Defined

Underlying *Hall* v. *DeCuir* and the cases which follow it is the conception that the free movement of persons in interstate commerce may not be obstructed or interfered with by state legislation predicated upon provincial notions of social policy. It was the very design and object of the commerce power "to prevent unjust and invidious distinctions, which local jealousies or local and partial interests might be disposed to introduce and maintain."[16] This is sound doctrine consistent with judicial exposition and analysis of the commerce power as developed over more than a century.

From *Gibbons* v. *Ogden*[17] in 1824 to *Southern Pacific Co.* v. *Arizona*[18] in 1945, this Court has made it clear that

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[15] 100 Md. at 612-613, 60 Atl. at 462-3.
[16] See *Veazie* v. *Moor*, 14 How 568, 574.
[17] 9 Wheat. 1.
[18] 325 U. S. 761.

an obvious and basic purpose of the commerce clause is to prevent the interruption or disruption of the actual movement of persons and property across state lines by local obstacles and impediments. Except where the local imposition is a reasonable corrective of a clear and substantial hazard to the local community created by the interstate movement itself,[19] this Court has consistently disapproved such local interference.[20] The language of the court in *Kelly* v. *Washington* is apposite and reflects a point of view which characterizes the decisions:

> "In such a matter [insuring the safety of tugboats] the State may protect its people * * *. If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule."[21]

In this connection, it seems important to note that while this Court on occasion has questioned certain of its own earlier distinctions between direct and indirect impositions upon commerce, the fact that exercise of control over inter-

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[19] E. G.: *South Carolina Highway Dept.* v. *Barnwell Bros., Inc.*, 303 U. S. 177; *Erie R. R.* v. *Public Utility Commissioners*, 254 U. S. 394; *Morgan's L. & T. R. R. & Steamship Co.* v. *Louisiana*, 118 U. S. 455.

[20] *Buck* v. *Kuykendall*, 267 U. S. 307; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; *Chicago B. & Q. R. Co.* v. *Railroad Commission of Wisconsin*, 237 U. S. 220; *Bowman* v. *Chicago & N. W. R. Co.*, 125 U. S. 465; *South Covington & C. St. Ry. Co.* v. *Covington*, 235 U. S. 537; *Wabash St. L. & P. Ry. Co.* v. *Illinois*, 118 U. S. 557.

[21] 302 U. S. 1.

state commerce is the very purpose and object of a questioned state statute and that its enforcement is achieved by interference with interstate movement itself, militate strongly against the validity of the statute. This is because such impact necessarily involves some invasion of the national interest in maintaining the freedom of commerce across state lines. If this fact alone is not conclusive, it at least suffices to establish the impropriety of the state regulation until and unless it is shown that urgent considerations of local welfare take a particular case out of the general rule.[22]

This aspect of the present case is especially noteworthy. Not only does the statute require a particular arrangement or rearrangement of interstate passengers while traveling through Virginia, but it accomplishes this result by a criminal sanction, the invocation of which completely interrupts the interstate movement and brings about the seizure and incarceration of the person who insists upon the peaceful and uninterrupted progress of his interstate journey. Thus the very analysis of the incidence and effect of the statute reveals so direct and serious an imposition upon interstate travel as to place upon the State an extremely heavy burden of justification which it is submitted the State has not met and cannot meet.

Beyond the foregoing considerations, the free movement of citizens of the United States throughout the nation is a

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[22] For such approach and analysis see *Pennsylvania* v. *West Virginia*, 262 U. S. 553, particularly at 596-7. In *Di Santo* v. *Pennsylvania*, 273 U. S. 34, it is believed that the divergence of majority and dissenting opinions is essentially whether the at least *prima facie* case of invalidity arising from the direct impact of the regulation on interstate commerce may be rebutted by a showing that there is grave local need for such regulation.

matter of special concern to the national sovereign. The privileges and immunities clause of the 14th amendment elevates this right of free movement to the dignity of a constitutional guaranty.[23] Where a subject matter is of such primary national concern, its involvement in a particular local interference with commerce makes it doubly imperative that national authority over this aspect of commerce be held exclusive. While the majority opinion in *Edwards* v. *California* did not allude to the constitutional privilege and immunity of free travel under the Fourteenth Amendment, it is believed that the incidence of the statute upon conduct in the area of this privilege is a fundamental consideration leading to the result reached in that case and a like result here.

A. State Statutes in This Field Are So Numerous and Diverse That Their Imposition on Interstate Commerce Would Be an Intolerable Burden

The impact of the present statute should properly be considered in the light of the cumulative effect of similar statutes in Virginia and elsewhere upon interstate passenger travel. The Supreme Court of Appeals of Virginia properly and correctly pointed out in its opinion in the present case that not only motor vehicles but other public carriers and the passengers thereon passing through the State are affected by similar statutory requirements of racial segregation:

> "The public policy of the Commonwealth of Virginia, as expressed in the various legislative Acts, is

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[23] *Crandall* v. *Nevada*, 6 Wall. 35; cf concurring opinion in *Edwards* v. *California*, 314 U. S. 160, 177.

and has been since 1900 to separate the white and Negro races on public carriers. As to railroads, see Acts of 1906, pages 236 and 237, carried in Michie's Code of 1942 as secs. 3962-3968; as to steamboats, see Acts of 1900, page 340, carried in Michie's Code 1942 as secs. 4022-4025; as to electric or street cars, see Acts of 1902-03-04, page 990, carried in Michie's Code 1942 as secs. 3978-3983, and as to motor vehicles see Acts of 1930, pages 343 and 344, carried in Michie's Code of 1942 as secs. 4097z, 4097aa, 4097bb, 4097cc, and 4097dd." (R. 60).

It is believed that this Court will take judicial notice of the fact that the State of Virginia extending from the Atlantic Ocean to the western mountain barrier of the Atlantic coastal plain is so located geographically as to require the entire body of north and south travel along the populous eastern seaboard to pass through that State. It is also to be noticed that all persons traveling south and southwest from the National Capital or traveling to the Capital from those directions must pass through Virginia. Thus a very substantial proportion of interstate passenger travel in America is necessarily affected by the attempted exercise of local policy which is here challenged.

Moreover, the variety and contrariety of policies and enactments of the several states with reference to segregation or non-segregation, as well as the variety and uncertainty of local rules determining the race of an individual make it clear that the burden imposed upon and the confusion introduced into interstate travel by the enforcement of multitudinous and uncertain regulations in the course of a single journey are tremendous.

Legislation affecting these questions is widespread and diverse in language and construction and the subject of

frequent change. Eighteen states have adopted so-called "Civil Rights Acts" prohibiting segregation on account of race or color against persons using certain public facilities, including public carriers.[24] On the other hand, other states have enacted laws requiring the segregation of races upon railroad trains,[25] street cars,[26] mofor vehicle car-

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[24] Cal. Civ. Code (Deering), 1941, Sec. 51-54; Colo. Stats., 1935 Ch. 35, Sec. 1-10; Conn. Gen. Stat. (Supp. 1933) Sec. 1160b; Ill. Rev. Stat., 1941, Ch. 38, Sec. 125-128g; Ind. Stat. (Burns), 1933, Sec. 10-901, 10-902; Iowa Code, 1939, Sec. 13251-13252; Kan. Gen. Stat., 1935, Sec. 21-2424; Mass. Laws (Michie), 1933, Chap. 272, Sec. 98, as amended 1934; Mich. Comp. Laws (Supp. 1933), Sec. 17, 115-146 to 147; Minn. Stat. (Mason), 1927, Sec. 7321. Neb. Comp. Stat., 1929, Ch. 23, Art. 1; N. J. Rev. Stat., 1937, Sec. 10:1-1 to 10:1-9; N. Y. Laws (Thompson), 1937, (1942, 1943, 1944 Supp.), Ch. 6, Sec. 40-42; Ohio Code (Throckmorton), 1933, Sec. 12940-12941; Pa. Stat. (Purdon), Tit. 18, Sec. 1211, 4653 to 4655; R. I. Gen. Laws, 1938, Ch. 606, Sec. 27-28, Ch. 612, Sec. 47-48; Wash. Rev. Stat. (Remington), 1932, Sec. 2686; Wis. Stat., 1941, Sec. 340.75. See also Me. Rev. Stat., 1930, Ch. 134, Sec. 7-10; N. H. Rev. Laws, 1942, Ch. 208, Sec. 3-4, 6.

[25] Ala. Code, 1940, Tit. 48, Sec. 196-197; Ark. Stat., 1937 (Pope), Sec. 1190-1201; Fla. Stat., 1941, Sec. 352.03-352-06; Ga. Code, 1933, Sec. 18-206 to 18-210, 18-9901 to 18-9906; Ky. Rev. Stat. (Baldwin), 1942, Sec. 276.440; La. Gen. Stat. (Dart), 1939, Sec. 8130-8132; Md. Code (Flack), 1939, Art. 27, Sec. 510-516; Miss. Code, 1942, Sec. 7784; N. C. Gen. Stat., 1943, Secs. 60-94 to 60-97; 13 Okla. St. Ann. 181-190; S. C. Code, 1942, Sec. 8396 to 8400-2; Tenn. Code (Michie), 1938, Sec. 5518-5520; Tex. Rev. Civ. Stat. (Vernon), 1936, Art. 6417; Tex. Pen. Code (Vernon), 1936, Art. 1659-1660; Va. Code (Michie), 1942, Sec. 3962-3968.

[26] Ark. Stat., 1937 (Pope), Sec. 1202-1207; Fla. Stat., 1941, Sec. 352.07-352.15; Ga. Code, 1933, Sec. 18-206 to 18-210, construed to include street railways; La. Gen. Stat. (Dart), 1939, Sec. 8188-8189; Miss. Code, 1942, Sec. 7785; N. C. Gen. Stat., 1943, Sec. 60-135 to 60-137; 13 Okla. Stat. 181-190; S. C. Code, 1942, Sec. 8490-8498; Tenn. Code (Michie), 1938, Sec. 5527-5532; Tex. Rev. Civil Stat. (Vernon), 1936, Art. 6417; Tex. Penal Code (Vernon), 1936, Art. 1659-1660; Va. Code, 1942, Sec. 3978-3983.

riers [27] and steamboats.[28] If all these laws can validly be applied to interstate commerce, the very prophesy in *Hall* v. *DeCuir* becomes a realty.

Furthermore, there is no uniformity even as respects the applicability of the several existing segregation laws to interstate transportation. Before the Virginia decision in the instant case, only two states, Tennessee and Mississippi, had held that their laws could affect interstate travelers; elsewhere they had been construed, in appropriate cases, as limited in their operation to passengers in intrastate commerce. Assuming a trip from the District of Columbia to Louisiana through Virginia, Kentucky, Tennessee, Alabama, and Mississippi, within the District of Columbia all passengers have the free run of the vehicle. But when Virginia is entered, passengers must move to comply with the statute under consideration. As soon, however, as Kentucky is reached, the interstate passenger regains his power of choice as to seats.[29] When the vehicle

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[27] Ala. Code, 1940, Tit. 48, Sec. 268; Ark. Stat., 1937 (Pope), Sec. 6921-6927, Laws 1943, p. 379; Fla. Stat., 1941, Sec. 352.03-352.08; Ga. Code, 1933, Sec. 68-616; La. Gen. Stat. (Dart), 1939, Sec. 5307-5309; Miss. Code, 1942, Sec. 7785; N. C. Gen. Stat. 1943, Sec. 62-109; 47 Okla. Stat. Ann., 201-210; S. C. Code, 1942, Sec. 8530 (1); Tex. Rev. Civ. Stat. (Vernon) 1936, Art. 6417; Tex. Pen. Code (Vernon) 1936, Art. 1661.1; Va. Code, 1942, Sec. 4097z-4097dd.

[28] Md. Code (Flack), 1939, Art. 27, Sec. 517-520; N. C. Gen. Stat., 1943, Sec. 60-94 to 60-97; S. C. Code, 1942, Sec. 8396; Va. Code, 1942, Sec. 4022-4026.

[29] The Kentucky statutes have consistently been construed as limited in operation to intrastate passengers. *South Covington & C. St. Ry. Co.* v. *Commonwealth*, 181 Ky. 449, 205 S. W. 603; *Chiles* v. *Chesapeake & O. Ry. Co.*, 125 Ky. 299, 101 S. W. 386; *Ohio Valley Ry.'s Receiver* v. *Lander*, 104 Ky. 431, 47 S. W. 344; *Chesapeake & O. Ry. Co.* v. *State*, 21 Ky. L. 228, 51 S. W. 160.

passes into Tennessee, the interstate passenger is again segregated.[30] When the vehicle crosses the line into Alabama, he is not subject to the segregation statute in Alabama which expressly excepts from its interdictions passengers in interstate commerce who started their journey in jurisdictions not having segregation statutes.[31] In Mississippi, segregation is again invoked, but entering into Louisiana the local segregation statute is once more inapplicable. The consequence of these numerous shifts, of the precedent arrangements which must be made to bring them about, and the administration of the details in accomplishing them, cannot be otherwise than burdensome to the national commerce and those engaged therein. It is also to be noted that the mechanics of segregation may differ greatly among the states requiring it.

There is no uniformity as to the type of transportation affected by the regulations of the individual states. Virginia and three other jurisdictions except express trains;[32] two except narrow gauge and branch lines;[33] one excepts relief trains;[34] one excepts excursion trains;[35] one permits special trains for the members of either race where regular

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[30] The Tennessee statute was construed to apply to interstate passengers in *Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566.

[31] Ala. Code, 1940, Title 48, Sec. 197.

[32] Md. Code (Flack), 1939, Art. 27, Sec. 516; N. C. Gen. Stat., 1943, Sec. 60-94; S. C. Code (1932) Sec. 8399; Va. Code Ann. (Michie, 1930), Sec. 3968.

[33] N. C. Gen. Stat., 1943, Sec. 60-95, (consent of Utilities Commission necessary); S. C. Code (1932) Sec. 8399.

[34] N. C. Gen. Stat., 1943, Sec. 60-94.

[35] Tex. Ann. Rev. Civ. State. (Vernon, 1925) Art. 6417, Tex. Ann. Pen. Code (Vernon, 1925) Art. 1660.

schedules are not interfered with;[36] and Virginia and seven other states except freight trains and cabooses.[37]

Unlike the antithetical Civil Rights Acts, segregation laws require, as a condition to their operation, a division of peoples upon a basis of race and, as a necessary concomitant thereof, a means whereby the division may be accomplished. Dissimilarity in definition of the persons to be affected by the law produces in turn a geographical dissimilarity in the operation of the several laws to the extent that carrier and passenger alike are seriously burdened, confused and embarrassed. An examination of the law of the states where legislative or judicial efforts in this direction have been made reveals that there is much diversity and conflict in the rules governing the proportion of "Negro blood" necessary to classify a person as a "Negro" or "colored person".[38]

The terms "colored person" and "Negro" have been variously defined as including all persons in whom there is

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[36] 13 Okla. Stat. Ann. 189.

[37] Ark. Stat., 1937 (Pope), Sec. 1201; Ky. Stat. Ann. (Carroll, 1930) Sec. 801; Md. Code (Flack), 1939, Art. 27, Sec. 516; 13 Okla. Stat. Ann. 187; S. C. Code (1932) Sec. 8399 (applies to freights with one passenger coach attached for local travel); Tenn. Code (Michie), 1938, Sec. 5518 (if passenger coach is carried, the races must be separated); Tex. Rev. Civ. Stat. (Vernon, 1936) Art. 6417, Tex. Pen. Code (Vernon, 1936) Art. 1660; Va. Code Ann. (Michie, 1930) Sec. 3968. In North Carolina the Utilities Commission may allow certain lines that run mixed trains to disregard the statute because of the small number of Negro passengers. N. C. Gen. Stat. 1943, Sec. 60-95.

[38] Some states have defined the terms by a general statute. Others have defined them only with respect to particular subjects. In some states, the definition varies according to the subject under consideration, so that a person may be classified as a colored person or Negro for one purpose and as a white person for another. In states where no statutory definition has been attempted, the courts are faced with the difficulty of deciding the query as best they can.

ascertainable any quantum of "Negro blood" whatever,[39] or all persons of Negro or African descent,[40] or only those persons who are of "Negro blood" to the third generation inclusive,[41] or the fourth generation inclusive,[42] or who have one-fourth [43] or one-eighth [44] or more "Negro blood". The range is so great that the same person making an interstate trip may be a Negro or colored person in one state through which he passes and a white person in another and consequently may find himself faced with a criminal prosecution because of a noncompliance with local laws necessitating a change of accommodations to conform to his changing legal status.

Moreover, the definitions within the same state are frequently conflicting. Aside from those states which have a

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[39] Ala. Code, 1940, Tit. 1, Sec. 2 and Title 14, Sec. 360; Ark. Stat. (Pope), 1937, Sec. 3290 (concubinage statute) and Sec. 1200 (separate coach law); Ga. Laws, 1927, p. 272; Ga. Code (Michie Supp.) 1928, Sec. 2177; N. C. Gen. Stat. 1943, Sec. 115-2 (separate school law); Tenn. Code (Michie) 1938, Sec. 8396; Va. Code (Michie), 1942, Sec. 67.

[40] Okla. Const., Art. XXIII, Sec. 11; Art. XIII, Sec. 3; 43 Okla. Stat. Ann. 12 (inter-marriage law); 70 Okla. Stat. Ann. 452 (separate school law); 13 Okla. Stat. Ann. 183 (separate coach law); Tex. Rev. Civ. Stat. (Vernon), 1936, Art. 2900 (separate school law); Art. 6417 (separate coach law); Art. 4607 (inter-marriage law).

[41] Md. Code (Flack), 1939, Art. 27, Sec. 445 (intermarriage); N. C. Const., Art. XIV, Sec. 8 (marriage); N. C. Gen. Stat., 1943, Sec. 51-3 and 14-181 (marriage law); Tenn. Const., Art. XI, Sec. 14 (miscegenation); Tenn. Code (Michie), 1938, Sec. 8409 (miscegenation); Tex. Pen. Code (Vernon), 1936, Sec. 493 (miscegenation).

[42] Fla. Const., Art. XVI, Sec. 24 (marriage).

[43] Ore. Comp. Laws, 1940, Sec. 23-1010 (intermarriage).

[44] Fla. Stats., 1941, Sec. 1.01 (6); Ind. Stat. (Burns), 1933, Sec. 44-104 (intermarriage); Miss. Const., Sec. 263, Miss. Code, 1942, Sec. 459 (intermarriage); Mo. Rev. Stat. 1939, Sec. 4651 (intermarriage); N. D. Rev. Code Secs. 14-0304 and 14-0305 (intermarriage); Ore. Comp. Laws, 1940, Sec. 23-1010 (intermarriage); S. C. Const., Art. III, Sec. 33 (intermarriage).

general statute defining the terms, only three have been found wherein the legislative definition is specifically applicable to the transportation segregation laws.[45] Assuming that the definition in an act covering another field of activity may be used as a pointer to show the general meaning of the terms in that jurisdiction, this course has not always been followed.[46] Besides, in some instances, two conflicting definitions are to be found in the law of a single state,[47] in each of which instances the applicable criterion as to transportation segregation is speculative. Since one carrier may follow one rule, and another carrier the other, and a third carrier a third rule with equal justification in the light of the ambiguous character of the law, the harmonious flow of interstate traffic can never be assured.

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[45] Arkansas, Oklahoma, Texas. See ante, footnotes 39, 40. See also *Lee* v. *New Orleans G. N. Ry.*, 125 La. 236, 51 S. 182.

[46] Compare *Tucker* v. *Blease*, 97 S. C. 303, 81 S. E. 668 with *Moreau* v. *Grandich*, 114 Miss. 560, 75 S. 434.

[47] Alabama: The Constitution, Sec. 102, formerly prohibited marriages of whites and persons of Negro blood no matter how remote the strain, while the marriage law (Code, 1923, Sec. 5001) only prohibited marriages of whites with persons of Negro blood to the third generation inclusive. This conflict was not removed until 1927 by Acts, 1927, p. 219.

Tennessee: Two statutes define the term "Negro" or "a person of color" as including every person who has any Negro blood in his veins (footnote 39) while the constitutional provision and the statute forbidding interracial marriages (footnote 41) only prohibit the union of whites and persons who have Negro blood to the third generation inclusive.

Texas: The separate school law, separate coach law, and intermarriage law all define the terms as including any descendant from Negro ancestry (footnote 39), but the penal statute punishing miscegenation defines the term "Negro" as including only those persons who are of Negro blood to the third generation inclusive.

Kentucky: See footnote 48.

Florida: See footnote 48.

Furthermore, the definitions are subject to change at any time and have frequently been changed in the past.[48]

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[48] Alabama: Prior to 1927, the marriage law forbade marriages of whites with persons of Negro blood to the third generation inclusive. Ala. Code, 1923, Sec. 5001. This rule was changed in 1927 (footnote 47, *supra*) in order to conform the statute to the constitutional provision.

Florida: Two statutes define the word "Negro" in such manner as to embrace only those who have one-eighth or more Negro blood (footnote 44), but the constitution (footnote 42) prohibits interracial marriages to the "fourth generation inclusive."

Georgia: Until 1927, a person was classified as colored only if he had one-eighth or more Negro blood. Ga. Code (Michie), 1926, Sec. 2177. In that year the definition was changed to include any person having any ascertainable portion of Negro blood (see footnote 39).

Kentucky: This State has no statutory definition. It was early held that the old Virginia law providing that all persons having one-fourth or more Negro blood were to be classified as colored persons has been carried over into Kentucky at the time that State was carved out of territory belonging to Virginia, *Gentry* v. *McMinnis*, 33 Ky. 382. However, in *Mullins* v. *Belcher*, 142 Ky. 673, 143 S. W. 1151, it was held that a child having one-sixteenth Negro blood could not attend a white school, the court holding that any child having an appreciable amount of Negro blood is colored. Nevertheless, it has been decided that a person who looks white, has straight hair, is of a copper complexion, and has other characteristics of a white person is not a mulatto within the statute prohibiting the marriage of whites and Negroes or mulattos. *Theophanis* v. *Theophanis*, 244 Ky. 689, 57 S. W. (2d) 957.

Louisiana: It was first held in this state that all persons, including Indians, who were not of the white race were "colored." *Adelle* v. *Beaugard*, 1 Mart. 183. In 1910, it was held that anyone having an appreciable portion of Negro blood was a member of the colored race within the meaning of the segregation law. *Lee* v. *New Orleans G. N. Ry.*, 125 La. 236, 51 S. 182, *supra* footnote 45. In the same year, however, it was decided that an octoroon was not a member of the Negro or black race within the meaning of the concubinage law (La. Act, 1908, No. 87). *State* v. *Treadaway*, 126 La. 300, 52 S. 500. Shortly after the latter decision, the present concubinage statute was enacted substituting the word "colored" for "Negro." La. Acts, 1910, No. 206, La. Crim. Code (Dart), 1932, Art. 1128-1130. The effect of the change is yet to be determined.

(Continued on page 26)

Commerce is thus subjected to additional harassment at the hands of state legislatures whose every attempt at redefinition produces an increased burden upon passenger and carrier alike.

Involving, as it did, a statute forbidding segregation, this additional hazard was not drawn into issue in *Hall* v. *DeCuir*. Legislative definition of the terms in question is a later and comparatively modern development. However, the ever-increasing danger to commerce stemming from the unstable meaning of a vital factor in the general segregation plan adds mightily to the conclusion there reached.

B. The Racial Arrangment of Interstate Passengers Within a Vehicle in Transit Across a State Is Not a Matter of Substantial Local Concern

The burden of the statute here upon interstate commerce as hereinbefore elaborated is to be contrasted with the unsubstantial character of the state's claim of interest in the subject matter. We are concerned here merely with persons in transit through a state in a vehicle. Such persons are in no sense integrated into the local community. Their mere passage through the state does not menace any legitimate local interests. It is to be remembered that the peace and good order of the passengers does not make the statute inoperative. There is no reason to apprehend that the normal power of the state to enact and enforce criminal

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(Continued from page 25)

North Carolina: On the issue of what children of mixed blood, if any, should be permitted to attend white schools, it was held in *Hare* v. *Board of Education*, 113 N. C. 10, 18 S. E. 55, that the definition employed in the marriage law would be determinative. This was changed in 1903 by a statute providing that no child with Negro blood in his veins should attend a white school. N. C. Pub. Laws, 1903, Ch. 435, Sec. 22; N. C. Gen. Stats., 1943, Sec. 115-20.

Virginia: Va. Code, 1887, Sec. 49, provided that those who had one-fourth or more Negro blood were to be considered colored. This was changed in 1910 (Acts, 1910, p. 581) to read one-sixteenth or more. It was again changed in 1930 by Acts, 1930, p. 97, to its present form. See footnote 39. Virginia also has a race registration act. Va. Code, 1942 (Michie) Sec. 5099a.

laws concerning breaches of the peace is inadequate to control the behavior of travelers. Indeed the very tendency of enforced rearrangement of passengers as they travel from state to state is to create disorder and dissension.

In this connection it is particularly noteworthy that in Virginia itself and throughout the southern states where segregation statutes are in force so many situations are excepted from their operation as to make clear that there is no pressing need for them.

The Virginia statute requiring segregation in railroad coaches expressly exempts sleeping cars and chair cars.[49] Thus on a single train some Negroes are segregated and others are not. The Virginia statutes are silent concerning any racial arrangements on dining cars. The entire field of transportation by air is free of racial regulation.

Exceptions in other states are even more striking. The very group of persons now under discussion, those traveling in interstate commerce, is beyond the reach of state segregation laws in most southern states either by specific statutory exclusion or judicial construction.[50] There is no evidence that domestic order or well being has suffered thereby.

The exemption of first-class passengers from segregation is of frequent occurrence.[51] In Texas those riding on excursion trains need not be segregated.[52] Thus, neither those occupying the most expensive accommodations nor the cheapest have required segregation to preserve local tranquility.

Provincial notions thus capriciously applied cannot be founded on any basic local need. Their imposition upon interstate commerce is wholly without justification.

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[49] Va. Code (Michie), 1942, Sec. 3968.

[50] See notes 13 and 14 *supra*, p. 12.

[51] Md. Code (Flack) 1939, Art. 27, Sec. 510; N. C. Gen. Stats. 1943, Sec. 60-94; Texas Rev. Civ. Stats. (Vernon, 1936), Art. 6417, 4477; Virginia Code (Michie), 3928, 1942.

[52] See note 35.

Conclusion

Hall v. *DeCuir* was decided seventy years ago, and many of the cases following it are also precedents of past generations. Today, commerce is vastly increased. It has far greater need than ever before for freedom from obstacles bred of provincialism. Moreover, *Hall* v. *DeCuir* was decided when the Civil War and the racial antagonisms attendant to it were fresh in the minds and emotions of men. Even then this Court was quite sure that the nation to the exclusion of the states, must have control of this aspect of interstate travel. Today we are just emerging from a war in which all of the people of the United States were joined in a death struggle against the apostles of racism. We have already recognized by solemn subscription to the Charter of the United Nations, particularly Articles One and Fifty Five thereof, our duty, along with our neighbors, to eschew racism in our national life and to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." How much clearer, therefore, must it be today, than it was in 1877, that the national business of interstate commerce is not to be disfigured by disruptive local practices bred of racial notions alien to our national ideals, and to the solemn undertakings of the community of civilized nations as well.

It is respectfully submitted that the judgment appealed from should be reversed.

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SPOTTSWOOD W. ROBINSON, 3RD,
Of Counsel.

APPENDIX A

Michie—Virginia Code

4097z. Segregation of White and Colored Passengers.—

All passenger motor vehicle carriers, operating under the provisions of chapter one hundred and sixty-one (a) of the Code of Virginia, shall separate the white and colored passengers in their motor busses and set apart and designate in each bus or other vehicle, a portion thereof, or certain seats therein, to be occupied by white passengers, and a portion thereof or certain seats therein, to be occupied by colored passengers, and such company or corporation, person or persons that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor, and upon indictment and conviction, shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1930, p. 343.)

4097aa. Discrimination Prohibited.—

The said companies, corporations or persons so operating motor vehicle carriers shall make no difference or discrimination in the quality or convenience of the accommodations provided for the two races under the provision of the preceding section. (1930, p. 343.)

4097bb. Driver May Change Designation of Seats.—

The driver, operator or other person in charge of any motor vehicle above mentioned, shall have the right, and he is hereby directed and required at any time when it may be necessary or proper for the comfort and convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race; but no contiguous seats on the same bench

shall be occupied by white and colored passengers at the same time; and said driver, operator or other person in charge of the vehicle may require any passenger to change his or her seat as it may be necessary or proper; the driver, operator or other person in charge of said vehicle who shall fail or refuse to carry out the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. (1930, p. 343.)

4097cc. Drivers are Special Policemen With Powers of Conservators of the Peace.—

Each driver, operator or person in charge of any vehicle, in the employment of any company operating the same, while actively engaged in the operation of said vehicle, shall be a special policeman and have all of the powers of conservators of the peace in the enforcement of the provisions of this act, and in the discharge of his duty as special policeman, in the enforcement of order upon said vehicles; and such driver, operator or person in charge of said vehicle shall likewise have the powers of conservators of the peace and of special policemen while in pursuit of persons for disorder upon said vehicles, for violating the provisions of this act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer; and, acting in good faith, he shall be for the purposes of this chapter, the judge of the race of each passenger whenever such passenger has failed to disclose his or her race. (1930, p. 344.)

4097dd. VIOLATION BY PASSENGERS; MISDEMEANOR; EJECTION.—

All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court. (1930, p. 344.)

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,
Appellant,
vs.
COMMONWEALTH OF VIRGINIA.

APPENDICES

WILLIAM H. HASTIE,
LEON A. RANSOM,
THURGOOD MARSHALL,
Attorneys for Appellant.

SPOTTSWOOD W. ROBINSON, 3RD,
Of Counsel.

Title 1, Section 2—Meaning of certain words and terms. —The following words, wherever they appear in this Code, shall have the signification attached to them in this section unless otherwise apparent from the context:

The word "person" includes a corporation as well as a natural person.

The word "writing" includes typewriting and printing on paper.

The word "oath" includes affirmation.

The words "signature" or "subscription" include mark when the person cannot write, if his name is written near the mark, and witnessed by a person who writes his own name as a witness.

The words "lunatic" or "insane" or the term "non compos mentis" include all persons of unsound mind.

The word "property" includes both real and personal property.

The term "real property" includes lands, tenements, and hereditaments.

The term "personal property" includes money, goods, chattels, things in action and evidence of debt, deeds, and conveyances.

The word "circuit" means judicial circuit.

The word "negro" includes mulatto.

The word "mulatto" or the term "person of color" means a person of mixed blood descended on the part of the father or mother from negro ancestors, without reference to or limit of time or number of generations removed.

The word "justice", when applied to a magistrate, means justice of the peace.

The term "justice of the peace", if not otherwise expressed, includes a notary public having and exercising the jurisdiction of a justice of the peace, within the precinct or ward for which he is appointed.

The word "preceding" means next before.

The word "following" means next after.

The word "state", when applied to the different parts of the United States, includes the District of Columbia, and the several territories of the United States.

The term "United States" includes the territories thereof, and the District of Columbia.

The words "jury" or "juries" include courts or judges in all cases when a jury trial is waived, or when the court or judge is authorized to ascertain and determine the facts as well as the law.

The word "month" means a calendar month.

The word "year" means a calendar year; but, whenever the word "year" is used in reference to any appropriations for the payment of money out of the treasury, it shall mean fiscal year.

(1927, p. 716.)

Title 14, Section 360—Marriage, adultery, and fornication between white persons and negroes.—If any white person and any negro, or the descendant of any negro intermarry, or live in adultery or fornication with each other, each of them shall, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years. (1927, p. 219.)

Title 48, Section 196—Separate coaches for whites and blacks.—All railroads carrying passengers in this state, other than street railroads, shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by partitions, so as to secure separate accommodations.

Section 197. Conductor must assign each passenger a seat in the car designated for his color.—The conductor of each passenger train is authorized and required to assign each passenger to the car or the division of the car, when it is divided by a partition, designated for the race to which such passenger belongs; and if any passenger refuses to occupy the car, or the division of the car, to which he is assigned by the conductor, such conductor may refuse to carry such passenger on the train, and for such refusal neither the conductor nor the railroad company shall be

liable in damages. But this section shall not apply to cases of white or colored passengers entering this state upon railroads under contracts for their transportation made in another state where like laws to this do not prevail.

Title 48, Section 268—Separate accommodations for white and colored passengers.—All passenger stations operated or kept by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races but such accommodations for the races shall be equal. All motor transportation companies or operators of vehicles carrying passengers for hire in this state, whether intrastate or interstate passengers, shall at all times provide equal but separate accommodations for the white and colored races, by providing separate vehicle or separate compartments on each vehicle or by dividing the vehicle by a partition constructed of metal, wood, strong cloth or other material as to obstruct the vision between the sections, and shall also distinguish the separate sections for the separate accommodation of the races. The conductor or agent of the motor transportation company in charge of any vehicle is authorized and required to assign each passenger to the division of the vehicle designated for the race to which such passenger belongs; and if the passenger refuses to occupy the division of the vehicle, to which he is so assigned by the conductor or agent of such motor transportation company, such conductor or agent of such motor transportation company may refuse to carry such passenger on said vehicle, and for such refusal neither the conductor or agent of the motor transportation company, nor the motor transportation company shall be liable in damages, but this section shall not apply to cases of white or colored passengers entering this state upon vehicles under contracts for their transportation made in another state where like laws to this do not prevail. Any motor transportation company or person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars for each offense and each day's violation of the same shall constitute a separate offense.

Alabama, Code, 1923

Section 5001. Marriage, adultery, and fornication between white persons and negroes.—If any white person and any negro, or the descendant of any negro, to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry, or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years.

Alabama, Acts, 1927

P. 219.

No. 214.) (H. 583. Jones of Bullock.

AN ACT

To amend Section 5001 of the Code of 1923

Be it Enacted by the Legislature of Alabama: That Section 5001 of the Code of 1923 be amended so as to read as follows: Section 5001 (7421) (5096) (4018) (4189) (3602) (61) marriage, adultery, and Fornication Between White Persons and Negroes.—If any white person and any negro, or the descendant of any negro intermarry, or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary for not less than two nor more than seven years.

Approved August 2, 1927.

Arkansas, Statutes, 1937 (Pope)

Section 1190. Equality of accommodations. All railway companies carrying passengers in this State shall provide equal but separate and sufficient accommodations for the white and African races by providing two or more passenger coaches for each passenger train; provided, each railway company carrying passengers in this State may carry one partitioned car, one end of which may be used by white passengers and the other end by passengers of the

African race, said partition to be made of wood, and they shall also provide separate waiting rooms of equal and sufficient accommodations for the two races at all their passenger depots in this State. Act April 1, 1893, Section 1, p. 200.

Section 1191. Exception as to street cars. The foregoing section shall not apply to street railroads. In the event of the disabling of a passenger coach, or coaches, by accident or otherwise, said company shall be relieved from the operation of this act until its train reaches a point at which it has additional coaches. Id., Section 1.

Section 1192. Passengers to occupy places assigned. No person or person shall be permitted to occupy seats in coaches or waiting rooms other than the ones assigned to them on account of the race to which they belong; provided, officers in charge of prisoners of different races may be assigned with their prisoners to coaches where they will least interfere with the comfort of other passengers; provided, further, that Section 1190 shall not apply to employees of a train in the discharge of their duties, nor shall it be construed to apply to such freight trains as carry passengers. Id., Section 1.

Section 1193. Separate sleeping and chair cars. Carriers may haul sleeping or chair cars for the exclusive use of either the white or African race separately, but not jointly. Id., Section 1.

Section 1194. Short lines. On all lines of railway less than thirty miles long, passenger coaches may be divided by partition. Id., Section 1.

Section 1195. Duty of officers. The officers of such passenger trains and the agents at such depots shall have power, and are required to assign each passenger or person to the coach or compartment or room used for the race to which such passenger or person belong. Acts 1891, p. 15, Section 2.

Section 1196. Penalty. Any passenger or person insisting on going into a coach or compartment or room to which by race he does not belong shall be liable to a fine of not less than ten dollars nor more than two hundred dollars, and any officer of any railroad company assigning a passenger or person to a coach or compartment or room other than the one set aside for the race to which said passenger or person belongs shall be liable to a fine of twenty-five dollars. Id., Section 2.

Section 1197. Duty of passenger. Should any passenger refuse to occupy the coach or compartment or room to which he or she is assigned by the officer of such railway company, said officer shall have the power to refuse to carry such passenger on his train, and should any passenger, or any other person not passenger, for the purpose of occupying or waiting in such sitting or waiting-room not assigned to his or her race, enter said room, said agent shall have the power, and it is made his duty, to eject such person from such room, and for such acts neither they nor the railway company which they represent, shall be liable for damages in any of the courts of this State. Id., Section 2.

Section 1198. Railroad's noncompliance—penalty. All railway companies that shall refuse or neglect to comply with the provisions and requirements of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction before any court of competent jurisdiction, be fined not less than one hundred dollars nor more than five hundred dollars, and every day that such railway company shall fail to comply with the provisions of this act, and every train run in violation of the provisions hereof, shall be a separate offense; and any conductor or other employees of such passenger train having charge of the same or any agent at such depot who shall refuse or neglect to carry out the provisions of this act shall, on conviction, be fined not less than twenty-five dollars nor more than fifty dollars for each offense. Id., Section 3.

Section 1199. Posting law. All railroad corporations carrying passengers in this State, other than street rail-

roads, shall keep this law posted up in a conspicuous place in each passenger coach and waiting-room. Id., Section 3.

Section 1200. Races defined. Persons in whom there is a visible and distinct admixture of African blood shall, for the purposes of this act, be deemed to belong to the African race; all others shall be deemed to belong to the white race. Id., Section 4.

Section 1201. Freight trains. The railroad companies shall not be required to furnish separate coaches in freight trains for the white and African races. Act February 21, 1898, Section 1.

Section 1202. Duty to operate. All persons, companies or corporations operating any street car line in any city of the first class, in the State of Arkansas, are hereby required to operate separate cars or to separate the white and colored passengers in the cars operated for both, and to set apart or designate in each car or coach so operated for both a portion thereof or certain seats therein to be occupied by white passengers, and a portion thereof or certain seats therein to be occupied by colored passengers. Act March 27, 1903, p. 178, Section 1.

Section 1203. Equality of accommodations. No persons, companies or corporations so operating street cars shall make any difference or discrimination in the quality or convenience of the accommodations provided for the two races under the provisions of this act. Id., Section 2.

Section 1204. Control of conductor. The conductor or other person in charge of any car or coach so operated upon any street car line shall have the right at any time, when in his judgment it may be necessary or proper for the comfort or convenience of passengers so to do, to change the said designation so as to increase or decrease the amount of space or seats set apart for either race, or he may require any passenger to change his seat when or so often as the change in the passengers may make such changes necessary. Id., Section 3.

Section 1205. Passengers to take designated seats. All passengers on any street car line shall be required to take the seat assigned to them, and any person refusing to do so shall leave the car, or, remaining upon the car, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed twenty-five dollars. Id., Section 4.

Section 1206. Penalty. Any person, company or corporation failing to operate separate cars, or to set apart or designate portions of the cars operated for the separate accommodation of the white and colored passengers as provided by this act, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed twenty-five dollars. Id., Section 5.

Section 1207. Extra or special cars. Nothing in this act shall be construed to prevent the running of extra or special cars for the exclusive accommodation of either white or colored passengers, if the regular cars are operated as required by this act. Id., Section 6.

Section 3290. "Person of negro race" defined. The words "person of negro race," as used in this act, shall be held to apply and include any person who has in his or her veins any negro blood whatever. Id. Section 3.

XII. Segregation of White and Colored on Busses.

Section 6921. Busses required to designate separate seats for whites and colored. All persons, firms, companies or corporations operating any motor propelled vehicle for the transportation of passengers over the highways of the State of Arkansas, are hereby required to designate separate seating space in each bus for the accommodation of white and colored passengers.

Section 6922. Designation—How made. Such designation shall be by means of a sign with letters of at least four inches and of sufficient size as to be visible and discernible at all times, in front of which all white passengers

shall be seated and behind which all colored passengers shall be seated. Id. Section 2.

Section 6923. Rights of Bus Operator. The operator or other person in charge of any such vehicle shall have the right at any time, when it may be necessary or proper in his judgment, for the comfort, convenience or accommodation of the passengers, to change said designation so as to increase or decrease the amount of space or seats set apart for either race by moving the sign hereinbefore required, or he may require any passenger to change his seat when or so often as the change in passengers may require. Id. Section 3.

Section 6924. No discrimination in service. No persons, firms, companies or corporations so operating motor propelled passenger carrying vehicles shall make any difference or discrimination in the quality or convenience of the accommodations provided for the two races hereunder. Id. Section 4.

Section 6925. Passenger to take seat assigned. All passengers on any motor propelled passenger carrying vehicle shall be required to take the seat assigned to them, and any person refusing to do so shall leave the vehicle, or remaining upon the vehicle, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding Twenty-five Dollars for the first offense; and upon conviction for a second offense shall be fined Five Hundred Dollars or sentenced to one year in jail, or both fined and imprisoned. Upon refusal of any passenger to leave the vehicle as aforesaid the operator or person in charge shall proceed to the nearest town, city, hamlet or village, and thereupon it shall be the duty of the first available peace officer to remove said passenger and subject him to arrest. Id. Section 5.

Section 6926. Violation—penalty. Any person, firm, company or corporation failing to designate portions of busses for separate accommodations of white and colored passengers as provided by this act, shall be guilty of a

misdemeanor, and upon conviction shall be fined in any sum not to exceed Twenty-five Dollars. Id. Section 6.

Section 6927. Not applicable to certain busses. Nothing in this act shall be construed to prevent the run of extra or special busses or motor propelled passenger carrying vehicles for the exclusive accommodation of either white or colored passengers, if the regular cars are operated as required by this act. Id. Section 7.

Acts of Arkansas, 1943

ACT 180.

AN ACT to Amend Act No. 124 of 1937, Approved February 24, 1937, and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. BUSSES REQUIRED TO SEPARATE SEATS FOR WHITE AND COLORED. All persons, firms, companies or corporations operating any motor propelled vehicle for the transportation of passengers over the streets and highways of the State of Arkansas, are hereby required to designate separate seating spaces in each such vehicle for the accommodation of white and colored passengers, and shall cause the white and colored passengers to remain segregated in the seats and spaces so designated.

Section 2. DESIGNATION—HOW MADE. Such designation shall be by means of a sign with letters of at least four inches and of sufficient size as to be visible and discernible at all times, which shall be posted in a prominent place at both the front and back of such vehicle and which shall direct that all white passengers shall seat from the front of the vehicle toward the back, and all colored passengers shall seat from the rear of the vehicle forward.

Section 3. DUTIES OF THE OPERATOR OR OTHER PERSON IN CHARGE OF SUCH VEHICLE. The operator or other person in charge of such vehicle shall have the right and

duty, at any time, when it may be necessary or proper in his judgment, for the comfort, convenience or accommodation of the passengers, to change such designation so as to increase or decrease the amount of space or seats set apart for either race, he may request any passenger to change his seat when or so often as the change in passengers may require.

Section 4. No Discrimination Service. No person, firms, companies or corporations so operating motor propelled passenger-carrying vehicles shall maintain any difference in the quality or convenience of the accommodations provided for the two races hereunder.

Section 5. Passenger to Take Seat Assigned. All passengers on any motor propelled passenger-carrying vehicle shall be required to take a seat or space assigned to them, and any person refusing to do so shall immediately leave the vehicle, or if he remains upon the vehicle, he shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $25.00 or more than $500.00, or sentenced to the county jail for not less than one month or more than six months, or by both fine and imprisonment. Upon refusal of any passenger to leave the vehicle as aforesaid, the operator or person in charge shall proceed to the nearest town, city, hamlet or village, and thereupon it shall be the duty of the operator or other person in charge of such vehicle to make complaint to the first available peace officer, whose duty it shall be to remove said passenger and subject him to arrest. The failure on the part of the operator or other person in charge of such vehicle to cause the white and colored passengers to take and remain in the seats and spaces provided for them, or the failure of such operator or other person in charge of such vehicle to immediately cause the arrest of any passenger refusing to comply with the request to take or remain in the seat and space so designated, shall be deemed a misdemeanor, and upon conviction, such operator or other person shall be fined in any sum not less than $25.00 or more than $500.00.

Section 6. (Any person, firm, company or corporation failing to designate portions of motor vehicles) for separate accommodations of white and colored passengers as provided by this Act, or who shall fail or refuse to require the operator or other person in charge of such motor vehicle, as their employee, to cause the white and colored passengers to take and remain in the seats and spaces designated for them, or who fails to require the operator or other person in charge of such vehicle, in their employ, to cause an immediate arrest of any passenger refusing to take and remain in the seat or space assigned to him, shall be guilty of a misdemeanor, and shall be fined in any sum not less than $25.00 or more than $500.00; any persons, firms, companies or corporations failing or refusing to comply with the provisions of this Act shall be liable for any damages to persons or property arising out of any disturbance caused by the failure to enforce the segregation of white and colored passengers.

Section 7. NOT APPLICABLE TO CERTAIN MOTOR VEHICLES. Nothing in this Act shall be construed to prevent the run of extra or special motor propelled passenger-carrying vehicles for the exclusive accommodations of either white or colored passengers, if the regular cars are operated as required by this Act.

Provided, further that this Act shall not apply to Motor Coaches operated in lieu of Street Cars on City streets under city franchises and regulations.

APPROVED: March 6, 1943.

Florida, Constitution, Article XVI

Section 24. Intermarriage of white persons and negroes prohibited.—All marriage between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.

Florida, Statutes, 1941

1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

(1) The singular includes the plural and vice versa.

(2) The masculine includes the feminine and neuter and vice versa.

(3) The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

(4) The word "writing" includes handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood, or other materials.

(5) The words "lunatic", "insane persons" and other like terms include idiots, lunatics, insane persons, non compos mentis and persons of deranged or unsound mind.

(6) The words "negro", "colored", "colored persons", "mulatto" or "persons of color", when applied to persons, include every person having one-eighth or more of African or negro blood.

(7) The word "oath" includes affirmations.

(8) Reference to any office or officer includes any person authorized by law to perform the duties of such office.

(9) Reference to the population or number of inhabitants of any county, city, town, village or other political sub-division of the state, shall be taken to be that as shown by the last preceding official state or federal census.

(10) The words "public body", "body politic" or "political sub-division" include counties, towns, villages, special tax school districts, special road and bridge districts and all other districts in this state.

(11) Crude turpentine gum (oleoresin), the product of a living tree or trees of the pine species, and gum-spirits-of-turpentine and gum resin as processed therefrom, shall be taken and understood to be agricultural products, farm products and agricultural commodities.

352.07 Separate accommodations for white and negro passengers on electric cars.—All persons operating urban and suburban (or either) electric cars as common carriers of passengers in this state, shall furnish equal but separate accommodations for white and negro passengers on all cars so operated.

352.08 Method of division in electric cars.—The separate accommodations for white and negro passengers directed in Section 352.07 shall be by separate cars, fixed divisions, movable screens, or other method of division in the cars.

352.09 Divisions to be marked "For White" or "For Colored."—The car or division provided for white passengers shall be marked in plain letters in a conspicuous place. "For White," and the car or division provided for negro passengers shall be marked in plain letters in a conspicuous place, "For Colored."

352.10 Not to apply to nurses.—Nothing in Sections 352.07, 352.08, 352.09, 352.12, 352.13, 352.14 or 352.15 shall be so construed as to apply to nurses of one race attending children or invalids of the other race.

352.11 Operating extra cars for exclusive use of either race.—Sections 352.07-352.15 shall not be so construed as to prevent the running of special or extra cars, in addition to the regular schedule cars; for the exclusive accommodation of either white or negro passengers.

352.12 Separation of races; penalty.—Any person operating urban and suburban (or either) electric cars as common carriers of passengers in this state, failing, refusing or neglecting to make provisions for the separation of the white and negro passengers on such cars as re-

quired by law, shall, for each offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars. This penalty may be enforced against the president, receiver, general manager, superintendent or other person operating such cars.

352.13 Duty of conductors; penalty.—The conductor or other person in charge of any such car shall see that each passenger is in the car or division furnished for the race to which such passenger belongs, and any conductor or other person in charge of such car who shall permit any passenger of one race to occupy a car or division provided for passengers of the other race, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding twenty-five dollars, or by imprisonment in the county jail for not exceeding sixty days.

352.14 Violation by passengers; conductor may arrest and eject; penalty.—Any passenger belonging to one race who willfully occupies or attempts to occupy any such car, or division thereof, provided for passengers of the other race, or who occupying such car or division thereof, refuses to leave the same when requested so to do by the conductor or other person in charge of such car, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding fifty dollars, or by imprisonment in the county jail for not exceeding three months. The conductor or other person in charge of such car is vested with full power and authority to arrest such passenger and to eject him or her from the car.

352.15 Each day of refusal separate offense.—Each day of refusal, failure or neglect to provide for the separation of the white and negro passengers as directed in this chapter shall constitute a separate and distinct offense.

Georgia, Code, 1933

Section 18-206. Separate cars or compartments for white and colored passengers; seats; lights; ventilation.—Railroad companies doing business in this State shall furnish equal accommodations, in separate cars or compartments of cars, for white and colored passengers, and when a car is divided into compartments, the space set apart for white and colored passengers respectively may be proportioned according to the proportion of usual and ordinary travel by each on the railroad or line on which the cars are used. Such companies shall furnish to the passengers comfortable seats and shall have the cars well and sufficiently lighted and ventilated. Officers or employees having charge of railroad cars shall not allow white and colored passengers to occupy the same car or compartment.

Section 18-207. Duty to assign passengers to their cars; police powers of conductors.—All conductors or other employees in charge of passenger cars shall assign all passengers to their respective cars, or compartments of cars, provided by the said companies under the provisions of Section 18-206 and all conductors of street cars and busses shall assign all passengers to seats on the cars under their charge, so as to separate the white and colored races as much as practicable; and all conductors and other employees of railroads and all conductors of street cars and busses shall have, and are hereby invested with, police powers to carry out said provisions.

Section 18-208. Remaining in seat, compartment or car other than that to which assigned.—No passenger shall remain in any car, compartment, or seat, other than that to which he has been assigned. The conductor and any and all employees on such cars are clothed with power to eject from the train or car any passenger who refuses to remain in the car, compartment or seat assigned to him.

Section 18-209. Nurses and servants excluded from operation of law.—The provisions of the preceding three sections shall not apply to colored nurses or servants in attendance on their employees.

Section 18-210. White and colored passengers on sleeping cars to be separated.—Sleeping car companies and railroad companies operating sleeping cars in this State shall have the right to assign all passengers to seats and berths under their charge, and shall separate the white and colored races in making said assignment, and the conductor and other employees on the train to which sleeping cars may be attached shall not permit white and colored passengers to occupy the same compartment: Provided, that nothing in this section shall be construed to compel sleeping car companies or railroads operating sleeping cars to carry persons of color in sleeping or parlor cars: Provided, that this section shall not apply to colored nurses or servants traveling with their employers. A conductor or other employee of a sleeping car, as well as a conductor or other employee of the train to which a sleeping car may be attached, shall have full police power to enforce this section. (Acts 1899, p. 66.)

Section 18-9906. Employee failing to assist in ejecting passenger from sleeping car.—A conductor or other employee of a sleeping car, or of a train carrying sleeping cars, who shall fail or refuse to assist in ejecting a passenger violating the provisions of section 18-210 shall be guilty of a misdemeanor.

Section 18-9907. Failure to keep water or lights in passenger cars.—A violation of section 18-211, requiring railroad companies to keep an adequate supply of good, pure drinking water in each passenger car at all hours, and lights during the night for the use of passengers, shall be a misdemeanor.

Section 18-9908. Conductor or agent of railroad failing to furnish water or lights.—Any conductor or agent of a railroad, who, after being requested by a passenger to furnish a sufficient supply of water to the passengers in each car, or light at night, shall pass any depot or station without so doing, may be indicted in any county through which the railroad of which he is agent or conductor runs, and shall be punished as for a misdemeanor.

Section 18-9909. Failure of railroad to install cinder deflectors on passenger coaches.—Any railroad company refusing or neglecting to comply with Section 18-212, with regard to instal'ing cinder deflectors on passenger coaches, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than $500 or more than $1,000 for each coach not equipped as required by said section.

Section 18-9910. Failure to supply railway station accommodations for passengers.—A failure by a railroad company to comply with Section 18-213, in relation to a lighted and comfortable room for passengers, shall be a misdemeanor.

Section 68-616. Carriage of white or colored passengers, or both.—Motor common carriers may confine themselves to carrying either white or colored passengers; or they may provide different motor vehicles for carrying white and colored passengers; and they may carry white and colored passengers in the same vehicle, but only under such conditions of separation of the races as the Commission may prescribe.

1928 Supplement to Georgia Code

Section 2177. (Section 1820.) Who are persons of Color.—All negroes, mulattoes, mestizos, and their descendants, having any ascertainable trace of either negro or African, West Indian, or Asiatic Indian blood in their veins, and all descendants of any person having either negro or African, West Indian, or Asiatic Indian blood in his or her veins, shall be known in this State as persons of color. Acts 1865-6, p. 239; 1927, p. 272.

Georgia, Laws of 1927

PERSONS OF COLOR; MARRIAGE; REGISTRY.

No. 317.

An Act to define who are persons of color and who are white persons, to prohibit and prevent the intermarriage of such persons, and to provide a system of registration and marriage licensing as a means for accomplishing the principal purpose, and to provide punishment for violations of the provisions of this Act, and for other purposes.

Section 1. Be it enacted by the General Assembly of the State of Georgia, that Section 2177 of the Civil Code of Georgia of 1910, (Acts 1865-6, page 239), being an Act to define persons of color, be and the same is hereby amended as follows: By striking therefrom the words "one-eighth" and inserting in lieu thereof the following words: "any ascertainable trace of either," and by adding and inserting after the word "African" and before the word "blood" the following words: "West Indian, or Asiatic Indian," and by adding and inserting after the word "veins" and before the word "shall" the following words: "and all descendants of any person having either Negro or African, West Indian, or Asiatic Indian blood in his or her veins," so that said Section 2177 as amended shall read as follows: "All negroes, mulattoes, mestizos, and their descendants, having any ascertainable trace of either Negro or African, West Indian, or Asiatic Indian blood in their veins, and all descendants of any person having either Negro or African, West Indian, or Asiatic Indian blood in his or her veins, shall be known in this State as persons of color."

Section 2. Be it further enacted, that upon the passage of this Act the State Registrar of Vital Statistics, under the supervision of the State Board of Health, shall prepare a form for the registration of individuals, whereon shall be given the racial composition of such individual, as Caucasian, Negro, Mongolian, West Indian, Asiatic Indian,

Malay, or any mixture thereof, or any other non-Caucasic strains, and if there be any mixture, then the racial composition of the parents and other ancestors in so far as ascertainable, so as to show in what generation such mixture occurred. Said form shall also give the date and place of birth of the registrant, name, race, and color of the parents of registrant, together with their place of birth if known, name of husband or wife of registrant, with his or her place of birth, names of children of registrant with their ages and place of residence, place of residence of registrant for the five years immediately preceding registration, and such other information as may be prescribed for identification by the State Registrar of Vital Statistics.

Section 3. Be it further enacted, that the State Registrar of Vital Statistics shall supply to each local registrar a sufficient number of such forms to carry out the provisions of this Act.

Section 4. Be it further enacted, that each local registrar shall personally or by deputy, upon receipt of said forms, cause each person in his district or jurisdiction to execute said form in duplicate, furnishing all available information required upon said form, the original of which form shall be forwarded by the local registrar to the State Registrar of Vital Statistics, and a duplicate delivered to the ordinary of the county. Said form shall be signed by the registrant, or, in case of children under fourteen years of age, by a parent, guardian, or other person standing in loco parentis. The execution of such registration certificate shall be certified to by the local registrar.

Section 5. If the local registrar have reason to believe that any statement made by any registrant is not true, he shall so write upon such certificate before forwarding the same to the State registrar or ordinary, giving his reason therefor.

Section 6. It shall be unlawful for any person to refuse to execute said registration certificate as provided in this Act, or to refuse to give the information required in the execution of the same; and any person who shall refuse to

execute such certificate, or who shall refuse to give the information required in the execution of the same, shall be guilty of a misdemeanor, and shall be punished as prescribed in Section 1065 of the Penal Code of Georgia of 1910. Each such refusal shall constitute a separate offense.

Section 7. The local registrar shall collect from each registrant a registration fee of thirty cents, fifteen cents of which shall go to the local registrar and fifteen cents of which shall go to the State Board of Health, to be used in defraying expenses of the State Bureau of Vital Statistics. If any registrant shall make affidavit that through poverty he is unable to pay said registration fee of thirty cents, the local registrar shall receive a registration fee of only ten cents for such registration, which sum shall be paid out of the funds of the State Bureau of Vital Statistics, and the State Bureau of Vital Statistics shall receive no fee for such registration. This section shall not apply to the registration or births or deaths, the registration of which is otherwise provided for.

Section 8. Be it further enacted, that it shall be a felony for any person to wilfully or knowingly make or cause to be made a registration certificate false as to color or race, and upon conviction thereof such person shall be punished by imprisonment in the penitentiary for not less than one year and not more than two years. In such case the State registrar is authorized to change the registration certificate so that it will conform to the truth.

Section 9. Be it further enacted, that upon the passage of this Act, the State Registrar of Vital Statistics shall prepare a form for application for marriage license, which form shall require the following information to be given over the signature of the prospective bride and groom; name and address; race and color; place of birth; age; name and address of each parent; race and color of each parent; and whether the applicant is registered with the Bureau of Vital Statistics of this or any other State, and, if registered, the county in which such registration was made. The State Registrar of Vital Statistics shall at all times

keep the ordinaries of each county in this State supplied with a sufficient number of said form of application for marriage license to care for all applications for marriage license. Each prospective bride and each prospective groom applying for marriage license shall fill out and execute said application in duplicate.

Section 10. Be it further enacted, that upon such applications for marriage license being filed with the ordinary by the prospective bride and prospective groom, the ordinary shall forward the original of such application to the State Registrar of Vital Statistics, and retain the duplicate of such application in his files.

Section 11. Be it further enacted, that the ordinary shall withhold the issuing of any marriage license until a report upon such application has been received from the State Registrar of Vital Statistics. Said report from the State Registrar of Vital Statistics shall be forwarded to the ordinary by the next return mail, and shall state whether or not each applicant is registered in the Bureau of Vital Statistics; if registered, the report shall state whether the statements made by each applicant as to race and color are correct according to such registration certificate. If the registration certificate in the office of the Bureau of Vital Statistics show that the statement of either applicant as to race or color are untrue, the report of the State Registrar of Vital Statistics shall so state, and in such case it shall be illegal for the ordinary to issue a marriage license to the applicants, until the truth of such statements of the applicants shall have been determined in a legal proceeding brought against the ordinary to compel the issuing of such license. If the report from the State Registrar of Vital Statistics shows that the applicants are not registered, and if the State Bureau of Vital Statistics has no information as to the race or color of said applicants, then the ordinary shall issue the marriage license if he has no evidence or knowledge that such marriage would be illegal. If one of the applicants is registered with the State Bureau of Vital Statistics and the other applicant is not so registered, if the records of the Bureau of Vital Statis-

ties contain no information to disprove the statements of either applicant as to color or race, then the ordinary shall issue the marriage license, if he has no evidence or knowledge that such marriage would be illegal. Provided, that where each party is registered and such registration certificate is on file in the office of the ordinary of the county where application for marriage license is made, it shall not be necessary for the ordinary to obtain any information from the State Bureau of Vital Statistics; and provided further, that when any person who has previously registered as required herein moves to another county, he may file with the ordinary of the county of his new residence a certified copy of his registration certificate, which shall have the same effect as if such registration had been made originally in said county.

Section 12. Be it further enacted, that where any application for marriage license shows that such applicant was not born in this State and is not registered with the Bureau of Vital Statistics of this State, the ordinary shall forward a copy of such application to the State Registrar of Vital Statistics of this State, and shall also forward a copy of the application to the clerk of the superior or circuit court, as the case may be, of the county of the applicant's birth, and another copy to the Bureau of Vital Statistics, at the capitol of the State, of the applicant's birth, with the request that the statements therein contained be verified. If no answer be received from such clerk or Bureau of Vital Statistics within ten days, the ordinary shall issue the license if he have no evidence or knowledge that such marriage would be illegal. If an answer be received within ten days, showing the statement of such applicant to be untrue, the ordinary shall withhold the issuing of the license until the truth of such statements of the applicant shall have been determined in a legal proceeding brought against the ordinary to compel the issuing of such license. In all cases where answers are received from such clerk or Bureau of Vital Statistics, a copy of the answer shall be forwarded to the State Registrar of Vital Statistics of this State.

Section 13. Be it further enacted, that when a marriage license is issued by the ordinary, it shall be returned to the ordinary by the officer or minister solemnizing the marriage, and forwarded by the ordinary to the State Registrar of Vital Statistics, to be permanently retained by said registrar.

Section 14. Be it further enacted, that the term "white person" shall include only person of the white or Caucasian race, who have no ascertainable trace of either Negro, African, West Indian, Asiatic Indian, Mongolian, Japanese, or Chinese blood in their veins. No person shall be deemed to be a white person any one of whose ancestors has been duly registered with the State Bureau of Vital Statistics as a colored person or person of color.

Section 15. Be it further enacted, that from and after the passage of this Act it shall be unlawful for a white person to marry any save a white person. Any person, white or otherwise, who shall marry or go through with a marriage ceremony in violation of this provision shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than one nor more than two years, and such marriage shall be utterly void.

Section 16. Be it further enacted, that any person who shall make or cause to be made, a false statement as to race or color of himself or parents, in any application for marriage license, shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two nor more than five years.

Section 17. Be it further enacted, that any ordinary who shall issue a marriage license without complying with each and every provision of this Act shall be guilty of and punished as for a misdemeanor.

Section 18. Be it further enacted, that if any civil officer, minister, or official of any church, sect, or religion, authorized to perform a marriage ceremony, shall wilfully or knowingly perform any marriage ceremony in violation of the terms of this Act, he shall be guilty of and punished as for a misdemeanor.

Section 19. Be it further enacted, that if any case of a marriage in violation of the provisions of this Act is reported to the State Registrar of Vital Statistics, he shall investigate such report, and shall turn over to the Attorney-General of the State the information obtained through such investigation.

Section 20. Be it further enacted that when any birth certificate is forwarded to the Bureau of Vital Statistics, showing the birth of a legitimate child to parents one of whom is white and one of whom is colored, it shall be the duty of the State Registrar of Vital Statistics to report the same to the Attorney-General of the State, with full information concerning the same. Thereupon it shall be the duty of the Attorney-General to institute criminal proceedings against the parents of such child, for any violation of the provisions of this Act which may have been committed.

Section 21. Be it further enacted, that it shall be the duty of the Attorney-General of the State, as well as the duty of the Solicitor-General of the Superior Court where such violation occurs, to prosecute each violation of any of the provisions of this Act when the same is reported to him by the State Registrar of Vital Statistics. If the Attorney-General fails or refuses to prosecute any such violation so reported to him by the State Registrar of Vital Statistics, the same shall be grounds for impeachment of the Attorney-General, and it shall be the duty of the State Registrar of Vital Statistics to institute impeachment proceedings against the Attorney-General in such case.

Section 22. Be it further enacted, that this Act shall be effective immediately upon its passage and approval by the Governor of the State.

Section 23. Be it further enacted, that all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

Approved August 20, 1927.

Indiana (Burns), Statutes, 1933

Section 44-104. Void marriages.—The following marriages are declared void:

First. When either party had a wife or husband living at the time of such marriage.

Second. When one of the parties is a white person and the other possessed of one-eighth or more of negro blood.

Third. When either party is insane or idiotic at the time of such marriage.

Kentucky, Revised Statutes, 1942

Section 276.440 [795; 796; 799; 801] Separate coaches or compartments for white and colored passengers.

(1) Every company operating railroad cars or coaches on any railroad line within this state, and every railroad company doing business in this state upon lines of railroad leased or wholly or partly owned by it, shall furnish separate coaches or compartments for the transportation of the white and colored passengers on its lines of railroad. Where separate compartments are used, the compartments shall be separated by a good and substantial partition, with a door therein. Each separate coach or compartment shall bear, in some conspicuous place, appropriate words in plain letters indicating the race for which it is set apart. The company shall make no difference or discrimination in the quality, convenience or accommodations in the coaches or compartments set apart for white and colored passengers.

(2) The conductor or manager of each train carrying passengers shall assign each white or colored passenger to his respective coach or compartment. If any passenger refuses to occupy the coach or compartment to which he is assigned, the conductor or manager may refuse to carry such passenger on his train, and may put such passenger off the train. Neither the conductor, manager nor railroad company shall be liable for damages for refusing to carry such passenger or putting him off the train.

(3) This section does not apply to the transportation of employes of railroads, or of nurses in charge of other persons, or of officers in charge of prisoners, nor does it apply to the transportation of passengers in any caboose car attached to a freight train.

Kentucky, Statutes (Carroll), 1930

Section 801. Persons to whom act not applicable.—The provisions of this act shall not apply to employees of railroads or persons employed as nurses, or officers in charge or prisoners nor shall the same apply to the transportation of passengers in any caboose car attached to a freight train.

Louisiana, General Statutes (Darl), 1939

Section 5307. Separate accommodations for white and colored races.—All bus companies, corporations, partnerships, persons or associations of persons carrying passengers for hire in their busses, carriages or vehicles in this state shall provide equal but separate accommodations for the white and colored races by designating separate seats or compartments so as to secure separate accommodations for the white and colored races; no person or persons shall be permitted to occupy seats or compartments other than the ones assigned to them on account of the race they belong to.

Section 5308. Violation by passenger or operator—Penalty.—The person in charge of such busses, carriages or vehicles shall have power and is hereby required to assign each passenger to a seat or compartment used for the race to which such passenger belongs; any passenger insisting upon going into a seat or compartment to which by race he or she does not belong, shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof, be imprisoned for the period of not more than thirty days in the parish prison, and any person in charge or officer of any bus, carriage or vehicle

insisting on assigning a person to a seat or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof to imprisonment for a period of not more than thirty days in the parish prison; and should any passenger refuse to occupy the seat or compartment to which he or she is assigned by the person in charge or officer of such bus, carriage or vehicle, said person in charge or officer shall have the power to refuse to carry such passenger on his car or cars, and for such refusal neither he nor the bus company, corporation, partnership, person or association of persons which he represents shall be held for damages in any of the courts in this state.

Section 5309. Violation by companies and officers—Penalty.—All officers and directors of bus companies, corporations, partnerships, persons or associations carrying persons for hire over the public highways of the state, who shall refuse or neglect to comply with the provisions and requirements of this act, shall be deemed guilty of a misdemeanor and shall, upon conviction before any court of competent jurisdiction, be fined not less than fifty dollars ($50.00), nor more than three hundred dollars ($300.00), or be imprisoned in the parish jail for not less than ten days nor more than sixty days, or both fined and imprisoned at the discretion of the court.

Section 8130. Accommodations for white and colored races on trains—Provision—Use.—All railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; provided, that this section shall not be construed to apply to street railroads. No person or persons, shall be permitted to occupy seats in coaches, other than, the ones, assigned, to them on account of the race they belong to.

Section 8131. Assignment of compartments—Enforcement—Penalties.—The officers of such passenger trains

shall have power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof to imprisonment for a period of not more than twenty (20) days in the parish prison, and any officer of any railroad insisting on assigning a passenger to a coach or compartment other than the one set aside for the race to which said passenger belongs shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof to imprisonment for a period of not more than twenty (20) days in the parish prison; and should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway; said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this state.

Section 8132. Disobedience of law by railroad employees—Penalties—Posting of Law—Limits on application of law.—All officers and directors of railway companies that shall refuse or neglect to comply with the provisions and requirements of this act shall be deemed guilty of a misdemeanor and shall upon conviction before any court of competent jurisdiction be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); and any conductor or other employees of such passenger train, having charge of the same, who shall refuse or neglect to carry out the provisions of this act shall on conviction be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each offense. All railroad corporations carrying passengers in this state other than street railroads shall keep this law posted up in a conspicuous place in each passenger coach and ticket office; provided that nothing in this act shall be construed as applying to nurses attending children of the other race; or prisoners in charge of sheriffs or their deputies, or other officers.

Section 8188. Accommodations for white and colored races on street cars—Provision—Use.—All street railway companies carrying passengers in their cars in this state shall provide equal but separate accommodations for the white and colored races by providing two or more cars or by dividing their cars by wooden or wire screen partitions so as to secure separate accommodations for the white and colored races, no person or persons shall be permitted to occupy seats in cars or compartments other than the ones assigned to them on account of the race they belong to.

Section 8189. Assignment of compartments—Enforcement—Penalties.—The officers of such street cars shall have power and are hereby required to assign each passenger to the car or compartment used for the race to which such passenger belongs; any passenger insisting upon going into a car or compartment to which by race he or she does not belong shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof be imprisoned for a period of not more than thirty (30) days in the parish prison, and any officer of any street railway insisting on assigning a passenger to a car or compartment other than the one set aside for the race to which said passenger belongs, shall be liable to a fine of twenty-five dollars ($25.00) or in lieu thereof, to imprisonment for a period or not more than thirty (30) days in the parish prison; and should any passenger refuse to occupy the car or compartment to which he or she is assigned by the officer of such street railway, said officer shall have the power to refuse to carry such passenger on his car or cars, and for such refusal neither he nor the street railway company which he represents shall be liable for damages in any of the courts of this state.

Criminal Code (Dart), 1932

Section 1128. Concubinage, white and colored persons—Penalty.—Concubinage between a person of the Caucasian or white race and a person of the colored or black race is hereby made a felony, and whoever shall be convicted thereof in any court of competent jurisdiction, shall

for each offense be sentenced to imprisonment at the discretion of the court for a term of not less than one month nor more than one year with or without hard labor.

Section 1129. Proof of violation of act—Concubinage defined.—Living together or cohabitation of persons of the Caucasian and of the colored races shall be proof of the violation of the provisions of Section 1 of this act. For the purpose of this act, concubinage is hereby defined to be the unlawful cohabitation of persons of the Caucasian and of the colored races whether open or secret.

Section 1130. Charging grand jury concerning act.—It shall be the duty of the judges of the several district courts of this state to specially charge the grand juries upon this act.

Maryland, Code (Flack), 1939 Article 27

Section 445. All marriages between a white person and a negro, or between a white person and a person of negro descent, to the third generation, inclusive, or between a white person and a member of the Malay race or between a negro and a member of the Malay race, or between a person of negro descent, to the third generation, inclusive, and a member of the Malay race, are forever prohibited, and shall be void; and any person violating the provisions of this Section shall be deemed guilty of an infamous crime, and punished by imprisonment in the penitentiary not less than eighteen months nor more than ten years; provided, however, that the provisions of this Section shall not apply to marriages between white persons and members of the Malay race, or between negroes and members of the Malay race, or between persons of negro descent, to the third generation, inclusive, and members of the Malay race, existing prior to June 1, 1935.

Section 510. All railroad companies and corporations, and all persons running or operating cars or coaches by steam on any railroad line or track in the State of Maryland, for the transportation of passengers, are hereby re-

quired to provide separate cars or coaches for the travel and transportation of the white and colored passengers on their respective lines of railroad; and each compartment of a new car or coach, divided by a good and substantial partition, with a door or place of exit from each division, shall be deemed a separate car or coach within the meaning of this section, and each separate car, coach or compartment shall bear in some conspicuous place appropriate words, in plain letters, indicating whether it is set apart for white or colored passengers.

Section 511. The railroad companies and corporations and persons aforesaid shall make no difference or discrimination in quality of or convenience or accommodation in the cars, coaches or compartments set apart for white and colored passengers.

Section 512. Any railroad company or corporation or person that shall fail, refuse or neglect to comply with the provisions of Sections 510 and 511 shall be deemed guilty of a misdemeanor, and, upon indictment and conviction thereof, shall be fined not less than three hundred dollars nor more than one hundred dollars for each offense.

Section 513. The conductors and managers on all railroads shall have power and are hereby required to assign to each white or colored passenger his or her respective car, coach or compartment, and, should any passenger refuse to occupy the car, coach or compartment to which he or she may be assigned by the conductor or managers, shall have the right to refuse to carry such passenger on his train, and may put such passenger off his train, and for such refusal or putting off the train neither the conductor, manager nor railroad company or corporation, or person owning or operating the same shall be liable for damages in any court; and the passenger so refusing to occupy the car, coach or compartment to which he or she may be assigned by the conductor or manager shall be deemed guilty of a misdemeanor, and, on indictment and conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, or be confined in jail not less than thirty days, or both, in the discretion of the court, for each offense.

Section 514. Any conductor or manager on any railroad who shall fail or refuse to perform the duties imposed upon him by Section 513 shall be deemed guilty of a misdemeanor, and, upon indictment and conviction thereof, shall be fined not less than twenty-five dollars and not more than fifty dollars for each offense.

Section 515. The following words contained in Section 510, to wit: "and each compartment of a car or coach divided by a good substantial partition, by a door or place of exit from each division shall be deemed a separate car or coach within the meaning of this section," shall not apply to the counties of Prince George's, Charles, St. Mary's, Calvert and Annie Arundel, so that in said counties there shall be separate cars or coaches for the travel and transportation of the white and colored passengers on the respective lines of railroad, and a car divided by a compartment shall not be deemed a separate car or coach within the meaning of this section, but a combination car, not over one-third of which is used for baggage or mail, for the purposes of this section shall be deemed a separate car, and each separate car or coach shall have in some conspicuous place, both outside and inside, appropriate words and plain letters indicating whether it is set apart for white or colored passengers; provided, this section shall not apply to trains making no scheduled intermediate service stops between their termini.

Section 516. The provisions of the six preceding sections shall not apply to employes of railroads, or to persons employed as nurses, or to officers in charge of prisoners, whether the said prisoners are white or colored, or both white and colored, or to the prisoners in their custody, nor shall the same apply to the transportation in any caboose car attached to a freight train, nor to parlor nor sleeping cars, nor through express trains that do no local business.

Section 517. It shall be the duty of any captain, purser or other officer in command of any steamboat carrying passengers and plying in the waters within the jurisdiction of the State of Maryland to assign white and colored passen-

gers on said boats to the respective locations they are to occupy as passengers while on said boat; and it shall be the duty of said captain, purser or other officer in command to separate, as far as the construction of his boat and due consideration for the comfort of the passengers will permit, the white and colored passengers on said boat in the sitting, sleeping and eating apartments; provided, however, that no discrimination shall be made in the quality and convenience of accommodation afforded passengers in said locations; and provided, that this section and the two succeeding sections shall not apply to nurses or attendants traveling with their employers, nor to officers in charge of prisoners, whether the said prisoners are white or colored, or both white and colored, or to prisoners in their custody.

Section 518. Any captain, purser or other officer in command of any steamboat as aforesaid who shall refuse to carry out the provisions of Section 517 shall be deemed guilty of a misdemeanor, and upon indictment in any court having jurisdiction, and conviction thereof, shall be fined not less than twenty-five dollars and not more than fifty dollars for each offense.

Section 519. Any passenger traveling on any steamboat plying in the waters within the jurisdiction of this State who shall wilfully refuse to occupy the location, whether of sitting, sleeping or eating, set apart or assigned by the captain, purser or other officer in command of such boat, shall be deemed guilty of a misdemeanor, and on indictment in any court having jurisdiction, and conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, or be confined in jail not less than thirty days, in the discretion of the court, for each offense; and such passenger may be ejected from the said boat by the officers thereof at any wharf or landing place of said boat, and, if necessary, such assistance may be invoked by the person in charge of said boat as he may require to eject such passenger; and provided, that in case of such ejectment neither the captain nor other person in charge of such boat, nor the steamboat company or corporation or person owning or operating such boat shall not be liable in damages in any court.

Section 520. It shall be the duty of every person, firm or corporation owning and operating steamboats on the Chesapeake Bay, between the city of Baltimore and points on said bay or its tributaries, to provide separate toilet or retiring rooms, and separate sleeping cabins on their respective steamboats, on or before the first day of July, in the year nineteen hundred and eight, for white and colored passengers, under a penalty of a fine of fifty dollars for each and every day said steamboats may be operated upon the waters aforesaid in violation of this section, and the provisions of the four preceding sections shall apply in the assigning of passengers to the use of the toilet, or retiring rooms, and the sleeping quarters set apart for the respective white and colored passengers.

Mississippi, Code, 1942

Section 459. Unlawful marriages—between white person and negro or Mongolian prohibited.—The marriage of a white person and a negro or mulatto or person who shall have one-eighth or more of negro blood, or with a Mongolian or a person who shall have one-eighth or more of Mongolian blood, shall be unlawful, and such marriage shall be unlawful and void; and any party thereto, on conviction, shall be punished as for marriage within the degrees prohibited by the last two sections; and any attempt to evade this and the two preceding sections by marrying out of this state and returning to it shall be within them.

Section 7784. Equal but separate accommodations for the races.—Every railroad carrying passengers in this state shall provide equal but separate accommodations for the white and colored races by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition to secure separate accommodation; and the conductor of such passenger train shall have power, and is required, to assign each passenger to the car, or the compartment of a car, used for the race to which such passenger belongs; and should any passenger refuse to occupy the car to which he or she is assigned by the con-

ductor, the conductor shall have power to refuse to carry such passenger on the train, and for such refusal neither he nor the railroad company shall be liable for damages in any court.

Section 7785. Separate accommodations for races—applicable to street railways.—All persons or corporations operating street railways, carrying passengers in their cars in this state, and every common carrier by motor vehicle as defined by chapter 148 of the laws of 1938, carrying passengers in this state shall provide equal, but separate, accommodations for the white and colored races, by dividing such passenger bus or street cars by a partition to secure separate accommodations; and the operator of such passenger buses shall have power, and is required, to assign each passenger to the compartment of a bus used for the race to which such passenger belongs; and should any passenger refuse to occupy the compartment to which he or she is assigned by the operator, the operator shall have power to refuse to carry such passenger on the bus, and for such refusal neither he nor the bus company, nor street railway company, shall be liable for damages in any court. Provided, however, that such partition of compartments may be adjustable and movable.

Section 7786. Passengers required to occupy compartments to which they are assigned.—Officers of such street cars and motor vehicles as defined by chapter 148 of the laws of 1938 [Title 37, ch. 4] shall have power and are required to assign each passenger to the car or compartment used for the race to which such passenger belongs. Any passenger insisting upon going into a car or compartment to which by race he or she does not belong shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof be imprisoned for a period of not more than thirty (30) days in the county jail; and any officer of any street railway, or motor vehicle, as herein defined, insisting on assigning a passenger to a car or compartment other than the one set aside for the race to which said passenger belongs shall be liable to a fine of twenty-five dollars ($25.00), or in lieu thereof, to imprisonment for a period of not more

than thirty (30) days in the county jail; and should any passenger refuse to occupy the car or compartment to which he or she is assigned by the officer of such street railway, or motor vehicle, said officer shall have power to refuse to carry such passenger on his car or cars, and for such refusal neither he nor the street railway company, or common carrier by motor vehicle, which he represents shall be liable for damages in any court.

Constitution

Section 263. The marriage of a white person with a negro or mulatto, or person who shall have one-eighth or more of negro blood, shall be unlawful and void.

Missouri, Revised Statutes, 1939

Section 4651. Illegal marriages.—No person having one-eighth part or more of negro blood shall be permitted to marry any white person, nor shall any white person be permitted to marry any negro or person having one-eighth part or more or negro blood; and every person who shall knowingly marry in violation of the provisions of this section shall, upon conviction, be punished by imprisonment in the penitentiary for two years, or by fine not less than one hundred dollars, or by imprisonment in the county jail not less than three months, or by both such fine and imprisonment; and the jury trying any such case may determine the proportion of negro blood in any party to such marriage from the appearance of such person. R. S. 1929, Section 4263.

North Carolina, Constitution

Section 8. Intermarriage of whites and negroes prohibited.—All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation, inclusive, are hereby forever prohibited. (Convention 1875.)

North Carolina, General Statutes, 1943

Section 14-181. Miscegenation.—All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are forever prohibited, and shall be void. Any person violating this section shall be guilty of an infamous crime, and shall be punished by imprisonment in the county jail or state's prison for not less than four months nor more than ten years, and may also be fined, in the discretion of the court.

Section 51-3. Want of capacity; void and voidable marriages.—All marriages between a white person and a negro or indian, or between a white person and person of negro or indian descent to the third generation, inclusive, or between a Cherokee indian of Robeson county and a negro, or between a Cherokee indian of Robeson county and a person of negro descent to the third generation, inclusive, or between any two persons nearer of kin than first cousins; or between a male person under sixteen years of age and any female, or between a female person under fourteen years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or is incapable of contracting from want of will or understanding, shall be void: Provided, double first cousins may not marry; and Provided further, that no marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section, except for that one of the parties was a white person and the other a negro or indian, or of negro or indian descent to the third generation, inclusive, and for bigamy.

Section 60-94. Separate accommodations for different races.—All railroad and steamboat companies engaged as common carriers in the transportation of passengers for hire, other than street railways, shall provide separate but equal accommodations for the white and colored races at passenger stations or waiting-rooms, and also on all trains

and steamboats carrying passengers. Such accommodation may be furnished by railroad companies either by separate passenger cars or by compartments in passenger cars, which shall be provided by the railroads under the supervision and direction of the utilities commission: Provided, that this shall not apply to relief trains in cases of accident, to Pullman or sleeping cars, or through express trains that do not stop at all stations and are not used ordinarily for traveling from station to station, to negro servants in attendance on their employers, to officers or guards transporting prisoners, nor to prisoners so transported.

Section 60-95. Certain carriers may be exempted from requirement.—The utilities commission is hereby authorized to exempt from the provisions of Section 60-94 steamboats, branch lines and narrow-gauge railroads and mixed trains carrying both freight and passengers, if in its judgment the enforcement of the same be unnecessary to secure the comfort of passengers by reason of the light volume of passenger traffic, or the small number of colored passenger travelers on such steamboats, narrow-gauge railroads, branch lines or mixed trains.

Section 60-96. Use of same coach in emergencies.—When any coach or compartment car for either race shall be completely filled at a station where no extra coach or car can be had, and the increased number of passengers could not be foreseen, the conductor in charge of such train may assign and set apart a portion of a car or compartment assigned for passengers of one race to passengers of the other race.

Section 60-97. Penalty for failing to provide separate coaches.—Any railroad or steamboat company failing to comply in good faith with the provisions of Sections 60-94 to 60-96 shall be liable to a penalty of one hundred dollars per day, to be recovered in an action brought against such company by any passenger on any train or boat of any railroad or steamboat company which is required by this chapter to furnish separate accommodations to the races, who has been furnished accommodations on such railroad train

or steamboat only in a car or compartment with a person of a different race in violation of law.

Section 60-135. Separate accommodations for different races; failure to provide misdemeanor.—All street, interurban and suburban railway companies, engaged as common carriers in the transportation of passengers for hire in the state of North Carolina, shall provide and set apart so much of the front portion of each car operated by them as shall be necessary, for occupation by the white passengers therein; and shall likewise provide and set apart so much of the rear part of such car as shall be necessary, for occupation by the colored passengers therein, and shall require as far as practicable the white and colored passengers to occupy the respective parts of such car so set apart for each of them. The provisions of this section shall not apply to nurses or attendants of children or of the sick or infirm of a different race, while in attendance upon such children or such sick or infirm persons. Any officer, agent or other employee of any street railway company who shall willfully violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court.

Section 60-136. Pasengers to take certain seats; violation of requirement misdemeanor.—Any white person entering a street car or other passenger vehicle or motor bus for the purpose of becoming a passenger therein shall, in order to carry out the purposes of Section 60-135, occupy the first vacant seat or unoccupied space nearest the front thereof, and any colored person entering a street car or other passenger vehicle or motor bus for a like purpose shall occupy the first vacant seat or unoccupied space nearest the rear end thereof, provided, however, that no contiguous seat on the same bench shall be occupied by white and colored passengers at the same time, unless and until all the other seats in the car have been occupied. Upon request of the person in charge of the street car or other passenger vehicle or motor bus, and when necessary in order to carry out the purpose of providing separate seats for white and colored passengers, it shall be the duty of any

white person to move to any unoccupied seat toward or in the front of the car, vehicle or bus, and the duty of any colored person to move to any unoccupied seat toward or in the rear thereof, and the failure of any such person to so move shall constitute *prima facie* evidence of an intent to violate this section. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. Any such person may also be ejected from the car, vehicle or bus by the person charged with the operation thereof. Each person now or hereafter charged with the operation of any such street car, passenger vehicle or motor bus is hereby invested with police powers and authority to carry out the provisions of this section.

Section 60-137. No liability for mistake in assigning passengers to wrong seat.—No street, suburban or interurban railway company, its agents, servants or employees, shall be liable to any person on account of any mistake in the designation of any passenger to a seat or part of a car set apart for passengers of the other race.

Section 62-109. Regulatory powers of commission; separation of races.—The commission is hereby vested with power and authority to supervise and regulate every motor vehicle carrier under this article; to make or approve the rates, fares, charges, classifications, rules and regulations for service and safety of operation and the checking of baggage of each such motor vehicle carrier; to supervise the operation of union passenger stations in any manner necessary to promote harmony among the operators and efficiency of service to the traveling public; to fix and prescribe the speed limit, which may be less but shall not be greater than that prescribed by law; to regulate the accounts and to require the filing of annual and other reports and of other data by such motor vehicle carriers; to require the increase of equipment capacity to meet public convenience and necessity; and to supervise and regulate motor vehicle carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public. The commission shall have power and authority,

by general order or otherwise, to prescribe rules and regulations applicable to any and all motor vehicle carriers, and the said commission is authorized, directed and empowered, whenever the public convenience and necessity may require, to increase, or decrease, or suspend temporarily the service upon any route for which a franchise certificate has been issued; and is hereby authorized, empowered, and directed to see that such rules and regulations and all, and singularly, the provisions of this article are enforced. The commission shall require any motor vehicle carrier operating on a franchise granted by the utilities commission and coming within the provisions of this article, if engaged in the transportation of both white and colored passengers for hire, to provide separate but equal accommodations for the white and colored races at passenger stations or waiting rooms where the carrier receives passengers of both races and/or on all busses or motor vehicles operating on a route or routes over which such carrier transports passengers of both races. Such accommodations may be furnished either by separate motor vehicles or by equal accommodations in motor vehicles: Provided that any requirement as to separate accommodation for the races shall not apply to specially chartered motored vehicles or to negro servants and attendants on their employers, or to officers or guards transporting prisoners; and provided that operators of motor vehicles or bus lines or taxicabs engaged in the transportation of passengers of one race only shall not be required to provide any accommodations for the other race, and provided that an operator shall not be required to furnish any accommodations to the other race over a line of route where he has undertaken and is engaged in the transportation of passengers of only one race, and provided, further, that nothing contained in this section shall be construed to declare operators of busses and/or taxicabs common carriers.

Section 115-2. Separation of races.—The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children shall be taught in the public schools pro-

vided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians, now living in Robeson, Sampson, and Richmond counties, shall have separate schools for their children.

North Dakota, Revised Code, 1943

Section 14-0304. Marriage Between White Person and Negro Person Void; Penalty. No white person residing or being in this state shall intermarry with any negro person. Every such marriage shall be void. Each of the contracting parties, upon conviction, shall be punished by imprisonment in the penitentiary for a term of not more than ten years, or by a fine of not more than two thousand dollars, or by both such fine and imprisonment.

Section 14-0305. Definition of a Negro Person. Every person who shall have one-eighth or more of negro blood shall be deemed and held to be a colored person or negro.

Oklahoma, Constitution

Article XIII

Section 3. Separate schools for white and colored children.—Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained. The term "colored children," as used in this section, shall be construed to mean children of African descent. The term "white children" shall include all other children.

Article XXIII

Section 11. Colored race—Negro race—White race.—Wherever in this Constitution and laws of this State, the

word or words, "colored" or "colored race," "negro" or "negro race," are used, the same shall be construed to mean or apply to all persons of African descent. The term "white race" shall include all other persons.

Oklahoma, Statutes, Annotated

TITLE 13

Section 181. Separate coaches or compartments.—Every railway company, urban or suburban car company, street car or interurban car, railway company, lessee, manager or receiver thereof, doing business in this State, as a common carrier of passengers for hire shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of the white and negro races, which separate coaches or cars shall be equal in all points of comfort and convenience. (R. L. 1910, Section 860.)

Section 182. Separate waiting rooms.—Every railroad company, street car company, urban, suburban, or interurban car company shall provide for and maintain separate waiting rooms at all their passenger depots for the accommodation of the white and negro races, which separate waiting rooms shall be equal in all points of comfort and convenience. Each waiting room shall bear in a conspicuous place words in plain letters indicating the race for which it is set apart. It shall be unlawful for any person to use, occupy or to remain in any waiting room, toilet room, or at any water tank in any passenger depot in this State, set apart to a race to which he does not belong. (R. L. 1910, Section 861.)

Section 183. Negro defined.—The term negro, as used herein, includes every person of African descent, as defined by the Constitution. (R. L. 1910, Section 862.)

Section 184. Separate coach and separate compartment defined.—Each compartment of a railway coach, divided by a good and substantial wooden partition, with a door

therein shall be deemed a separate coach within the meaning of this Article, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of an urban or suburban car company, interurban car or railway company, or street car company, divided by a board or marker, placed in a conspicuous place, bearing appropriate words in plain letters, indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this Article. (R. L. 1910, Section 863.)

Section 185. Penalty—Separate offenses.—Any railway company, street car company, urban or suburban car company, or interurban car or railway company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers, with separate coaches or compartments as above provided, or fail to provide and maintain separate waiting rooms as provided herein, shall be liable for each and every failure to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the State, in any court of competent jurisdiction, and each trip run with such railway train, street car, urban, suburban or interuban car without such separate coach or compartment shall be deemed a separate offense. (R. L. 1910, Section 864.)

Section 186. Passengers violating statute—Penalty—Refusal to carry—Ejection.—If any passenger upon a railway train, street car, urban, suburban or interurban car provided with separate coaches or compartments as above provided shall ride in any coach or compartment not designated for his race, after having been forbidden to do so by the conductor in charge of the train or car, or shall remain in any waiting room not set apart for the race to which he belongs, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than twenty-five dollars.

Should any passenger refuse to occupy the coach or compartment or room to which he or she is assigned by the

officer of such railway company, said officer shall have the power to refuse to carry such passenger on his train, and should any passenger or any other person not a passenger, for the purpose of occupying or waiting in such sitting or waiting room not assigned to his or her race, enter said room, said agent shall have the power and it is made his duty to eject such person from such room, and for such neither they nor the railroad company which they represent shall be liable for damages, in any of the courts of this State. (R. L. 1910, Section 865.)

Section 187. Exceptions to application of act.—The provisions of this act shall not be so construed as to extend to officers having in custody any person or persons, or employees upon trains or cars in the discharge of their duties, nor shall it be construed to apply to such freight trains as carry passengers in cabooses, provided that nothing herein contained shall be construed to prevent railway companies in this state from hauling sleeping cars or dining cars or chair cars attached to their trains for use exclusively for either white or negro passengers separately but not jointly and, provided further, that the Corporation Commission shall have power and authority to exempt any station or depot from the requirements of this act, for such period of time as may be ordered in any city or town where no negroes reside.

Section 189. Extra or special trains.—Nothing in this Article shall be construed to prevent the running of extra or special trains or cars for the exclusive accommodation of either white or negro passengers, if the regular trains or cars are operated as required by this Act and upon regular schedule. (R. L. 1910, Section 868.)

TITLE 43

Section 12. Miscegenation prohibited.—The marriage of any person of African descent, as defined by the Constitution of this State, to any person not of African descent, or the marriage of any person not of African descent to any person of African descent, shall be unlawful and is hereby prohibited within this State. (R. L. 1910, Section 3894.)

Section 201. Carriers to provide separate compartments.—Every bus or transportation company, corporation, individual, lessee, manager or receiver thereof, doing business in this state as a common carrier of passengers for hire between fixed termini, shall provide separate compartments, as hereinafter provided, for the accommodation of the white and negro races, which separate compartments shall be equal in all points of comfort and convenience. (Laws 1931, p. 184 [S. B. No. 21], Section 1.)

Section 202. Separate waiting rooms at stations or depots.—Every bus or transportation company, corporation, individual, lessee, manager or receiver thereof, doing business in this state as a common carrier between fixed termini shall provide for and maintain separate waiting rooms at their stations or depots for the accommodation of white and negro races, which separate waiting rooms shall be equal in all points of comfort and convenience. Each waiting room shall bear in a conspicuous place words in plain letters indicating the race for which it is set apart. It shall be unlawful for any person to use, occupy, or to remain in any waiting room, toilet room, or in any depot or station in this state set apart to the race to which he does not belong. (Laws 1931, p. 184 [S. B. No. 21], Section 2.)

Section 203. Persons regarded as negroes.—The term "negro," as used herein includes every person of African descent, as defined by the Constitution. (Laws 1931, p. 185 [S. B. No. 21], Section 3.)

Section 204. Separate compartment, what constitutes. —Each compartment of a bus or motor vehicle divided by, or indicated by a board or marker placed in a conspicuous place bearing words in plain letters indicating the race for which it is set apart shall be deemed a separate compartment within the meaning of this Act. (Laws 1931, p. 185 [S. B. No. 21], Section 4.)

Section 205. Motor vehicle defined.—The term "motor vehicle" when used in this Act shall mean any automobile, motor bus or any other self propelled vehicle carrying passengers for hire between fixed termini not operated or driven upon fixed rails, or track. (Laws 1931, p. 185 [S. B. No. 21], Section 5.)

Section 206. Failure to comply with act—Punishment. —Any bus company, motor vehicle company, transportation company, lessee, manager or receiver thereof, who shall fail to provide its vehicles under the provisions of this Act, with separate coaches or compartments, as above provided, or fail to provide and maintain separate waiting rooms as provided herein, shall be liable for each and every failure to a penalty of not less than One Hundred ($100.00) Dollars, nor more than Five Hundred ($500.00) Dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction, and each trip run with such vehicle or motor bus, as defined herein, without any separate compartment shall be deemed a separate and distinct offense. (Laws 1931, p. 185 [S. B. No. 21], Section 6.)

Section 207. Violations by passengers—Refusal to carry—Ejection from waiting room.—If any passenger upon motor bus or vehicle, as defined in this Act, provided with separate compartment as above provided, shall ride in any compartment not designated for his race after having been forbidden to do so by the driver or person in charge of said vehicle or bus, or shall remain in any waiting room not set apart for the race to which he belongs, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Ten ($10.00) Dollars nor more than Twenty-five ($25.00) Dollars. Should any passenger refuse to occupy the compartment or room to which he is assigned by the officer or employee of such motor vehicle or bus company, said officer or employee

shall have the power and the authority to refuse to carry said passenger on his motor vehicle, and should any passenger or any other person not a passenger, for the purpose of occupying or waiting in such waiting room not assigned to his race, enter said room, said agent or employee shall have the power and it is made his duty to eject such person from such room, and for such neither they nor the motor vehicle or bus company which they represent shall be liable for damage in any of the courts of this state. (Laws 1931, p. 185 [S. B. No. 21], Section 7.)

Section 208. Persons excepted from application of this Act.—The provisions of this Act shall not be so construed as to extend to officers having in custody any person or persons, or employees, upon motor vehicles in the discharge of their duties. (Laws 1931, p. 186 [S. B. No. 21], Section 8.)

Section 209. Exclusion from compartment or removal from vehicle by driver.—Drivers or persons in charge of any motor bus or vehicle provided with separate compartments shall have the authority to refuse any passenger admittance to any compartment in which they are not entitled to ride under the provisions of this Act, and the person in charge of such motor vehicle or bus shall have authority, and it shall be his duty to remove from said motor vehicle any passenger not entitled to ride therein under the provisions of this Act and upon refusal to do so shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten ($10.00) Dollars nor more than Two Hundred and Fifty ($250.00) Dollars, and the company, corporation, individual, manager, agent, employee or other officer, shall not be held for damages for any lawful removal of a passenger as herein provided. (Laws 1931, p. 186 [S. B. No. 21], Section 9.)

Section 210. Disposition of fines.—All fines collected under the provisions of this Act shall go to the Court fund of the county in which conviction is had. (Laws 1931, p. 186 [S. B. No. 21], Section 10.)

TITLE 70

Section 452. Definition of terms.—The term "colored," as used in the preceding section shall be construed to mean all persons of African descent who possess any quantum of negro blood, and the term "white" shall include all other persons. The term "public school," within the meaning of this article, shall include all schools provided for, or maintained, in whole or in part, at public expense. (Laws 1913, ch. 219, p. 571, art. 15, Section 2.)

Oregon, Compiled Laws, 1940

Section 23-1010. Miscegenation: Unlawfulness of intermarriage of races: Validity of purported marriage. Hereafter it shall not be lawful within this state for any white person, male or female, to intermarry with any negro, Chinese, or any person having one-fourth or more negro, Chinese, or Kanaka blood, or any person having more than one-half Indian blood; and all such marriages, or attempted marriages, shall be absolutely null and void.

South Carolina, Code, 1942

Section 8396. Separate coaches for white and colored—toilet compartments.—All railroad and steam ferries and railroad companies engaged in this State as common carriers of passengers for hire, shall furnish separate coaches or cabins for the accommodation of white and colored passengers: *provided*, equal accommodations shall be supplied to all persons without distinction of race, color or previous condition, in such coaches or cabins: *provided, further* that all first class coaches and cabins shall be provided with a

toilet compartment at each end of such coaches or cabins; on one of which compartments shall be placed the word "women" and on the other compartment shall be placed the word "men"; the toilet compartment for women shall be provided with a hopper seat, and, in addition, either with seats for at least two persons, or a lavatory, as the carrier may elect. The public service commission of this State shall, at a hearing upon due notice to all railroads, steam ferries and railroad companies engaged in this State as common carriers of passengers for hire, to which this section shall apply, determine when said carriers shall make the changes contemplated and provided for in this article.

Section 8399. Exceptions to sections 8396 to 8398.—The provisions of sections 8396 to 8398 shall not apply to nurses on trains, nor to narrow gauge roads, or branch lines, nor roads under forty miles in length, or to relief trains in case of accident, or to through vestibule trains not intended or used for local travel, nor to regular freight trains with a passenger coach attached for local travel, nor to officers or guards transporting prisoners, nor to prisoners or lunatics being so transported: *provided*, that all railroads operated by steam under forty miles in length shall furnish separate apartments for white and colored passengers: *provided, further*, that where said railroads under forty miles in length operate both a daily passenger train and a freight train, with or without a coach attached, said railroad shall be required to furnish separate apartments for white and colored passengers only on the said passenger trains: *provided*, also, that the provisions hereof shall not apply to electric railroads. *Provided, further*, that as to trains consisting of not more than one passenger car unit, operated principally for the accommodation of local travel, although operated both intrastate and interstate, and irrespective of the motive power used, the public service commission is hereby authorized to make such modifications, changes and exceptions in and to the requirements of sections 8396 to 8398, inclusive, as in its best judgment may be feasible and reasonable in the circumstances, and the regulations established by the commission pursuant to this

authority shall constitute exceptions to the provisions of sections 8396 to 8398, inclusive.

Section 8530-1. Passenger motor vehicle carriers separate white and colored passengers.—(1) Required—penalties.—All passenger motor vehicle carriers, operating in the State of South Carolina shall separate the white and colored passengers in their motor buses and set apart and designate in each bus or other vehicle, a portion thereof, or certain seats therein, to be occupied by white passengers, and a portion thereof, or certain seats therein, to be occupied by colored passengers, and such company or corporation, person or persons that shall fail, refuse or neglect to comply with the provisions of this sub-section shall be guilty of a misdemeanor, and upon indictment and conviction, shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense.

South Carolina, Constitution

Article III

Section 33. Marriages of whites and negroes,—sexual intercourse.—The marriage of a white person with a negro or mulatto, or person who shall have one-eighth or more of negro blood, shall be unlawful and void. No unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of fourteen years.

Tennessee, Code (Michie), 1938

Section 5518. Separate coaches or apartments for white and colored races.—All railroads carrying passengers in the state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition, so as to secure separate accommodations; but any person may be permitted to take a nurse in the car or compartment set aside for such persons. This law shall

not apply to mixed and freight trains which only carry one passenger or combination passenger and baggage car, but, in such cases, the one passenger car so carried shall always be partitioned into apartments, one apartment for the whites and one for the colored.

Section 5519. Conductors must separate passengers.—The conductors of such passenger trains shall have power, and are required, to assign passengers to the car or compartments of the car when it is divided by a partition, used for the race to which such passengers belong, and, should any passenger refuse to occupy the car to which he is assigned by such conductor, said conductor shall have power to refuse to carry such passenger on his train; and, for such refusal, neither he nor the railroad company shall be liable for any damages in any court.

Section 5520. Failure of companies and conductors to comply; penalties.—All railroad companies that shall fail, refuse, or neglect to comply with the requirements of section 5518 shall be guilty of a misdemeanor, and be fined not less than one hundred nor more than five hundred dollars; and any conductor who shall fail, neglect, or refuse to carry out the provisions of this law shall be fined not less than twenty-five nor more than fifty dollars for each offense.

Section 5527 3079a1. Portions of car to be set apart and designated for each race.—All persons, companies, or corporations operating any street car line in the state are required, where white and colored passengers are carried or transported in the same car or cars, to set apart and designate in each car or coach, so operated, a portion thereof or certain seats therein to be occupied by white passengers, and a portion thereof or certain seats therein to be occupied by colored passengers; but nothing in this article shall be construed to apply to nurses attending children or other helpless persons of the other race. (1905, ch. 150, sec. 1.)

Section 5528 3079a2. Printed sign to indicate cars or parts of cars for each race.—Large printed or painted signs shall be kept in a conspicuous place in the car or cars, or the parts thereof set apart or designated for the different races,

on which shall be printed or painted, if set apart or designated for the white people, and it being a car so designated or set apart, "This car for white people." If a part of a car is so designated, then this sign, "This part of car for white people." If set apart or designated for the colored race, this sign to be displayed in a conspicuous place as follows, "This car for the colored race." If any part of a car is set apart or designated for said race, then this sign as follows, "This part of the car for the colored race."

Section 5529 3079a3. Conductor may increase or diminish space for either race, or require change of seats.—The conductor or other person in charge of any car or coach so operated upon any street car line shall have the right at any time, when in his judgment it may be necessary or proper for the comfort or convenience of passengers so to do, to change the said designation so as to increase or decrease the amount of space or seats set apart for either race, or he may require any passenger to change his seat when or so often as the change in the passengers may make such change necessary.

Section 5530 3079a4. Passengers to take seats assigned by conductor and designated for their race; refusal and remaining on car is a misdemeanor.—All passengers on any street car line shall be required to take the seats assigned to them, and any person refusing to do so shall leave the car or remaining upon the car shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed twenty-five dollars; provided, no conductor shall assign any person or passenger to a seat except those designated or set apart for the race to which said passenger belongs.

Section 5531 3079a5. Failure to set apart portions of car for each race is a misdemeanor.—Any person, company, or corporation failing to set apart or designate separate portion of the cars operated for the separate accommodation of the white and colored passengers, as provided by this article, shall be guilty of a misdemeanor and fined in any sum not to exceed twenty-five dollars.

Section 5532 3079a6. Special cars for exclusive accommodation of either race.—Nothing in this article shall be construed to prevent the running of extra or special cars for the exclusive accommodation of either white or colored passengers, if the regular cars are operated as required by this article.

Section 8409 4186 (2437, 2437a). Whites, negroes, etc., not to intermarry or cohabit.—The intermarriage of white person with negroes, mulattoes, or persons of mixed blood descended from a negro, to the third generation inclusive, or their living together as man and wife in this state, is prohibited. (1822, ch. 19, sec. 1; 1870, ch. 39, sec. 1; const., art. 11, sec. 14.)

Constitution

ARTICLE XI

Section 14. The intermarriage of white persons with negroes, mulattoes, or persons of mixed blood, descended from a negro to the third generation, inclusive, or their living together as man and wife, in this State, is prohibited. The Legislature shall enforce this section by appropriate legislation.

Texas, Revised Civil Statutes (Vernon), 1936

Art. 2900. [2897-8] Separate schools.—All available public school funds of this State shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. No white children shall attend schools supported for colored children, nor shall colored children attend schools supported for white children. The terms "colored race" and "colored children," as used in this title, include all persons of mixed blood descended from negro ancestry. [Acts 1905, p. 263.]

Art. 4607. [4613] [2959] [2843] Certain intermarriages prohibited.—It shall not be lawful for any person of Cau-

casian blood or their descendants to intermarry with Africans or the descendants of Africans. If any person shall violate any provision of this article, such marriage shall be null and void. [P. D., 4670; P. C., 346.]

Art. 6417. [6746 to 6753] Separate coaches.—1. Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this State as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience.

2. "Negro" defined.—The term "negro" as used herein, includes every person of African descent as defined by the statutes of this State.

3. "Separate coach" defined.—Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of a street car or interurban car divided by a board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Penalty.—Any railway company, street car company, or intrurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each failure to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the State; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense.

5. Exceptions.—This article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

6. Law to be posted.—Every railroad company carrying passengers in this State shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law.

7. Duty of conductor.—Conductors of passenger trains, street cars, or interurban lines provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this law. [Acts 1891, p. 44; Acts 1907, p. 58; G. L. vol. 10, p. 46.]

Texas, Revised Penal Code (Vernon), 1936

Art. 493. [484] [347] [327] "Negro" and "white person."—The term "negro" includes also a person of mixed blood descended from negro ancestry from the third generation inclusive, though one ancestor of each generation may have been a white person. Any person not included in the foregoing definition is deemed a white person within the meaning of this law.

Art. 1659. [1523] [1010] Separate coaches.—1. Every railway company, street car company and interurban railway company, or any person or the agent of any person,

firm, or corporation who operates an interurban, commercial motor vehicle in carrying passengers for hire between any cities, towns, or villages of this State, lessee, manager, or receiver thereof doing business in this State as a common carrier of passengers for hire shall provide separate coaches or compartments for the accommodation of white and negro passengers.

2. "Negro" defined. The term negro as used herein includes every person of African descent as defined by the Statutes of this State.

3. (a) "Separate Coach" defined. Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein, shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart.

(b) Separate compartments for street car, interurban car and commercial motor vehicle defined. Each street car, interurban car or commercial motor vehicle having a board or marker placed in a conspicuous place bearing appropriate words in plain letters indicating the race for which space is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Violating separate coach law. If any passenger upon a train or street car, interurban car or commercial motor vehicle provided with separate coaches or compartments as above provided shall ride in any coach or compartment not designated for his race after having been forbidden to do so by the conductor in charge of the train, he shall be fined not less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

5. Duty of Conductor. Conductors of passenger trains, street cars, interurban lines, or commercial motor vehicle provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the pro-

visions of this law, and the conductor in charge of the train or street car, interurban car or commercial motor vehicle shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car or commercial motor vehicle any passenger not entitled to ride therein under the provisions of this law, and upon his refusal to do so knowingly he shall be fined not less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

6. Fines to go to School Fund. All fines collected under the provisions of this law shall go to the available common school fund of the county in which conviction is had. Prosecutions under this law may be instituted in any county through or into which said railroad may be run or have an office. [As amended Acts 1935, 44th Leg., p. 387, ch. 147, Section 1.]

Art. 1660. Exceptions.—The preceding article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

Art. 1661. Preference in transportation.—By the word "preference" as used in this article is meant any advantage, privilege, right, opportunity, precedence, choice, favor, priority, or gain that is or may be, or is sought or purposed to be accorded, granted, given, allowed, permitted or extended to any person, place, or thing, as against any other person, place, or thing in the receipt, carriage, transportation, movement, placing, storing, handling, caring for or delivery of any freight, commodity or article, or any railroad car or by any common carrier in this State, or any agent or employé thereof. Any person who shall ask, solicit, demand, or receive, directly or indirectly, from any person, corporate or otherwise, any money, reward, favor,

benefit, or other thing of value, or the promise of either, as a consideration for procuring or effecting, or with the intent of the person asking, soliciting, demanding, charging or receiving the same, or the promise thereof, that such person can or will, seek or undertake to procure or effect any preference in the receipt, carriage, transportation, storing, movement, placing, handling, caring for, or delivery of any freight, commodity or article, or any railroad car by any common carrier in this State or any agent or employé thereof, shall be fined not less than one hundred nor more than one thousand dollars and be imprisoned in jail not less than thirty days nor more than six months. [Acts 1921, p. 34.]

Virginia, Code (Michie), 1942

Section 67. Colored persons and Indians defined.—Every person in whom there is ascertainable any negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes living on reservations allotted them by the Commonwealth of Virginia having one-fourth or more of Indian blood and less than one-sixteenth of negro blood shall be deemed tribal Indians so long as they are domiciled on said reservations. (Code 1887, Section 49; 1910, p. 581; 1930, p. 97.)

Section 3962. Separate cars for white and colored passengers.—All persons, natural or artificial, who are now, or may hereafter be, engaged in running or operating any railroad in this State by steam for the transportation of passengers are hereby required to furnish separate cars or coaches for the travel or transportation of the white and colored passengers on their respective lines of railroad. Each compartment of a coach divided by a good and substantial partition, with a door therein, shall be deemed a separate coach within the meaning of this section, and each separate coach or compartment shall bear in some conspicuous place appropriate words in plain letters, in-

dicating the race for which it is set apart. (Id., ch. 4, Section 28.)

Section 3963. Company to make no discrimination in quality of accommodations for white and colored passengers.—No difference or discrimination shall be made in the quality, convenience or accommodation in the cars or coaches or partitions set apart for white and colored passengers under the preceding section. (Id., ch. 4, Section 29.)

Section 3964. Liability for failure to comply with two preceding sections.—Any railroad company or companies, person or persons, that shall fail, refuse, or neglect to comply with the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and upon indictment and conviction thereof shall be fined not less than three hundred nor more than one thousand dollars for each offense. (Id., ch. 4, Section 30.)

Section 3965. Conductors to assign white and colored passengers to their respective compartments.—The conductors or managers on all such railroads shall have power, and are hereby required, to assign to each white or colored passenger his or her respective car, coach, or compartment. If the passenger fails to disclose his race, the conductor and managers, acting in good faith, shall be the sole judges of his race; and if any passenger refuse to occupy the car, coach, or compartment to which he or she may be assigned by the conductor or manager, said conductor or manager shall have the right to refuse to carry such passenger on his train, and may put him off his train. For such refusal and putting off of the train, neither the manager, conductor, nor railroad company shall be liable for damages in any court. (Id., ch. 4, Section 31.)

Section 3966. Penalty for failure to carry out provisions of preceding section.—Any conductor or manager on any such railroad who shall fail or refuse to carry out the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon indictment and conviction thereof, shall be fined not less than twenty-five nor

more than fifty dollars for each offense. (Id., ch. 4, Section 32.)

Section 3967. When portion of one compartment may be assigned to passengers of another race.—When any coach or compartment of a car for either race shall be completely filled, where no extra coaches or cars can be had, and the increased number of passengers could not be foreseen, the conductor in charge of such train is hereby authorized to assign and set apart a portion of the car or compartment assigned to passengers of one race to passengers of another race. (Id., ch. 4, Section 33.)

Section 3968. Application of preceding sections.—The provisions of sections thirty-nine hundred and sixty-three, thirty-nine hundred and sixty-four, thirty-nine hundred and sixty-five and thirty-nine hundred and sixty-six shall not apply to employees on railroads or to persons employed as nurses, or to officers in charge of prisoners, or lunatics, whether said prisoners or lunatics are white or colored, or both white and colored, or to prisoners in his custody, nor shall the same apply to the transportation of passengers in any caboose car attached to a freight train, nor to Pullman Cars, nor to through or express trains that do no local business.

Section 3978. Electric railway companies to separate white and colored passengers.—All urban, interurban, and suburban electric railway companies or other persons operating trains, cars or coaches by electricity for the carriage of passengers, shall separate the white and colored passengers in their cars and set apart and designate in each car or coach a portion thereof, or certain seats therein to be occupied by white passengers, and a portion thereof, or certain seats therein, to be occupied by colored passengers, and such company or corporation, person or persons that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor, and upon indictment and conviction they shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense.

Section 3979. Discrimination as to quality of accommodation for races not permitted; heating cars.—The said companies, corporation or persons so operating trains, cars or coaches upon such lines of railroad or railway shall make no difference or discrimination in the quality and convenience of the accommodations provided for the two races, under the provisions of the preceding section. Said companies, corporations or persons so operating trains, coaches or cars upon such lines of railroad or railway shall in cold weather reasonably heat the several apartments of all cars carrying passengers therein. (1902-3-4, p. 968, ch. 4, Section 42; 1906, p. 92.)

Section 3980. May decrease or increase space for either race.—The conductor, manager or other person in charge of any car or coach so operated upon any such line of railroad or railway as is mentioned in section thirty-nine hundred and seventy-eight shall have the right, and he is hereby directed and required at any time when it may be necessary or proper for the comfort and convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race; but, no contiguous seats on the same bench shall be occupied by white and colored passengers at the same time (unless or until all of the other seats in said car shall be occupied); and said conductor or manager may require any passenger to change his or her seat as often as it may be necessary or proper; the said conductor or manager of any such railroad or railway who shall fail or refuse to carry out the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. (1902-3-4, ch. 4, Section 43; 1906, p. 92.)

Section 3981. Conductor and motorman conservators of the peace.—Each conductor and motorman in the employment of said company, and upon the cars of said company, shall be a special policeman, and have all the powers of conservators of the peace in the enforcement of the provisions of this chapter, and in the discharge of his duty as

special policeman in the enforcement of order upon said cars and said right of way; and such conductors and motormen shall likewise have the powers of conservators of the peace and of special policemen while in pursuit of persons for disorder upon said cars and right of way for violating the provisions of this chapter, and until such persons as may be arrested by such conductor or motorman shall have been placed in confinement, or delivered over to the custody of some other conservator of the peace or police officer; and, acting in good faith, he shall be, for the purposes of this chapter, the judge of the race of each passenger, whenever such passenger has failed to disclose his or her race. (1902-3-4, p. 968, ch. 4, Section 45; 1906, p. 92.)

Section 3982. Provisions not to apply to employees, nurses, etc.—The provisions of sections thirty-nine hundred and seventy-eight, thirty-nine hundred and eighty, and thirty-nine hundred and eighty-one shall not apply to employees engaged in conducting, managing or operating said trains, cars, or coaches, nor to persons employed as nurses, nor officers in charge of prisoners or lunatics. (1902-3-4, p. 968, ch. 4, Section 47; 1906, p. 92.)

Section 3983. Penalty for failure to obey conductor in respect to seats assigned.—All persons who fail, while on any coach or car used for the carriage of passengers for hire by any company or corporation, or person or persons, on any railway line, whether the motive power thereof be steam or electricity, or other motive power, or whether said coach or car be on a street railway or interurban railway or a steam railway, to take and occupy the seat or seats or other space assigned to them by the conductor, manager or other person in charge of such car or coach, or whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the direction of any such conductor, manager or other person, as aforesaid, to change their seats from time to time, as occasions require, pursuant to any lawful rule, regulation or custom in force on such lines as to assigning separate seats or compartments, or other space, to white and colored passengers,

respectively, being first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from said car, and from the right of way of said company by any conductor, motorman or manager of said company, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said car, they shall not be entitled to a return of any part of the same. (1910, p. 335.)

Section 4022. Separation of white and colored passengers; discrimination; application of section.—It shall be the duty of the captain, purser, or other officer in command of any steamboat carrying passengers and plying in the waters within the jurisdiction of the Commonwealth, to assign white and colored passengers on said boats to the respective location they are to occupy as passengers while on said boats, and to separate the white and colored passengers on said boats in the sitting, sleeping, and eating apartments: but, no discrimination shall be made in the quality and convenience of accomodation afforded passengers in said location. This section shall not apply to nurses or attendants traveling with their employers, nor to officers in charge of prisoners or lunatics. (1902-3-4, p. 968, ch. 6, Section 1.)

Section 4023. Penalty for not complying with provisions of preceding section.—Any captain, purser, or other officer in command of said boat who shall fail or refuse to carry out the provisions of the preceding section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars for each offense.

Section 4024. Passenger to occupy place assigned; penalty for disorderly conduct; duty of officer in charge.—Any passenger or passengers traveling on any steamboat plying in the waters within the juridiction of the Commonwealth, who shall wilfully refuse to occupy the location,

whether of sitting, sleeping, or eating, set apart or assigned by the captain, purser, or other officer in command of such boat, or behaves in a riotous or disorderly manner, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than five dollars nor more than fifty dollars, or confined in jail not less than thirty days, or both, in the discretion of the court; and such persons may be ejected from said boat by the officers thereof at any landing place of said boat; and, if necessary, such assistance may be invoked by such person in charge of such boats as they may require to eject such passenger.

Section 4025. Officer of wharf or landing; officers of vessels, etc., to be conservators of the peace.—The president or general manager of any steamship or steamboat company, whose boats ply in the waters within the jurisdiction of this State, may, with the approbation of the circuit court of any county, or the corporation court of any city, where the said steamship or steamboat company has a wharf or landing, appoint one or more police agents, who shall have authority upon the said wharf or landing, and at other places within this State belonging to such company, to exercise all the powers which can lawfully be exercised by any constable for the preservation of the peace, the arrest of offenders and disorderly persons, and for the enforcement of the laws against crime; and such president or general manager may remove any such agent at his pleasure: provided, that any circuit or corporation court giving such consent may at any time revoke it. Masters of steamships or steamboats, and wharf or landing agents, shall be conservators of the peace, and they, and each of them, shall have the same power to make arrests that justices have, except that the masters of steamships and steamboats shall only have such power on board their respective vessels, and the agents at their respective places of business; and the said masters and agents may cause any person so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.

Section 4026. Owners of steamboat wharves to provide thereat suitable accommodations for the patrons of steam-

boats using the same.—The owner or owners of any steamboat wharf shall provide at their wharves suitable accommodations for the patrons of the steamboats using said wharves. The said accommodation shall consist of separate and noncommunicating rooms for the white and colored races, and said rooms shall be properly lighted and heated from one-half hour before the scheduled arrival of the boat and until such time after the departure thereof as will provide for the accommodation of passengers leaving said boat: but, the provisions of this section shall not apply to those wharves at which steamers arrive and depart between seven o'clock in the morning and seven o'clock in the evening, at which there are public houses open for the public, and at which the public are comfortably cared for while waiting for said boats. Any owner or owners of wharves aforesaid who fail to comply with any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than twenty dollars for each offense. This section, however, shall not apply to any wharf where no wharfage is charged.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN
Appellant

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

REPLY BRIEF OF APPELLANT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN
Appellant

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

REPLY BRIEF OF APPELLANT

AUTHORITY FOR FILING

Pursuant to the privilege granted by paragraph 5 of Rule 27 of this Court, appellant, before the call of this case for argument, files this Reply Brief addressed to arguments advanced in the Brief of Appellee.

ARGUMENT

I

The "Police Power" Argument of Appellee Is Predicated Upon an Erroneous Analysis of the Present Problem

Relying upon cases which have permitted states to impose racial segregation of passengers in intrastate commerce, the Commonwealth has argued in Point III of its brief that the questioned statute of Virginia is a "reasonable, proper and valid exercise of the police power." In so

arguing the Commonwealth has failed to recognize the essential difference between the considerations involved in determining whether a permissible regulation or classification has been made under the equal protection clause of the 14th Amendment in a matter of merely local significance and the considerations involved when a state is charged with invading the exclusive jurisdiction of the nation under the commerce clause. These two situations present distinct problems and invoke different criteria of judgment. In one case the question is whether government may impose the regulation at all. In the other the inquiry is whether the state must leave the matter for national determination.

In deciding what a state may do under the 14th Amendment in a situation of only local significance, this Court recognizes that its function is narrowly limited. Judicial judgment as to the utility or wisdom of the state's action is not involved. The state's action may appear provincial, ill considered or even hurtful to the community, yet be sustained. The national courts intervene only to supply the minimum corrective necessary to secure the individual against the injurious effect of regulations, classifications or procedures which, even from the local view, must seem arbitrary, outrageous and grossly unfair to all reasonable persons. Beyond this the 14th Amendment does not restrict the vagaries of local government in the areas where regulation, if permitted at all, must be by the state.

The judicial function is vastly different where the state is charged with invading an area of exclusive national jurisdiction under the negative implications of the commerce clause. If, as in the instant case, a state lays hands upon commerce moving among the states, it has entered a field of primary national concern. The dominance of the nation in this area is clear.[1] Congress may act to the exclusion of

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[1] "The principle that, without controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation is not to be avoided by 'simply invoking the convenient apologetics of the police power.'" Southern Pacific Co. v. Arizona, 325 U. S. 761, 65 Sup. Ct. 1515, 1525.

the states and, without action by Congress, the power of the several states is drastically limited by the negative implications of the commerce clause. The state has no such freedom to act in accord with local notions as is permitted under the 14th Amendment. Thus in the circumstances of any given case this Court is called upon to determine whether, in the light of the dominant national interest in free commerce, local interference is to be tolerated. In this process the Court cannot escape an independent evaluation of the purpose, significance and utility of the state regulation. In no other way can it be decided whether interstate commerce may reasonably be required to bear the burden which the state seeks to impose upon it. If it appears to the Court that no significant protection of legitimate and important local interests is to be achieved by the regulation, then clearly there is no justification for the imposition upon interstate commerce. It is only when the Court finds that the probable protection to the local community is so substantial in relation to the burden imposed upon commerce as to make that imposition unobjectionable, that the local regulation of a field of national interest and authority may be permitted.

In brief, the determination of "reasonableness" under the 14th Amendment involves only the protection of the individual against the most clearly arbitrary and intolerable action of government. But, in cases arising under the commerce clause, judgment must be exercised and state impositions evaluated in the light of the relative functions of state and nation in an area where admittedly the nation is dominant.

This basic distinction between the considerations involved in the application of the 14th Amendment to matters of only local significance and in the application of the commerce clause to preclude the states from infringing national jurisdiction has repeatedly been recognized by this Court. Its

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In Public Utilities Comm. v. Attleboro Steam & Electric Co., 273 U. S. 83, a state regulation of interstate power rates was invalidated despite a clear showing that the rate was reasonable and that substantial local interests would be jeopardized by a lower rate. Cf. Shafer v. Farmers

most striking exemplification occurs where in successive cases a single statute is approved as a local regulation consistent with the 14th Amendment, but disapproved under the commerce clause when applied to importations from other states. Such was the history in this Court of both the New York milk control law and the Pennsylvania statute prohibiting the sale of oleomargarine.[3]

If the foregoing analysis is correct, the "police power" argument of the Commonwealth is beside the point. The considerations developed in Point II of appellant's brief are decisive in placing regulations concerning racial segregation in interstate commerce within the area of exclusive national power.

A. The Involvement of Highway Travel Has No Special Significance Here

The Commonwealth has sought to strengthen its "police power" argument by the contention that the pronouncements of this Court seem to recognize a greater authority of the state over vehicles moving upon its highways than over railway trains.

It is true that this Court has recognized certain legitimate concerns of the state with highways which do not extend to railways. Thus the preservation and maintenance of highways built by the state is a matter of state concern to a greater degree than is the preservation and maintenance of privately owned railways. Similarly, there are special problems of safety characteristic of highway travel by a

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Grain Co., 268 U. S. 189. As recently as Nippert v. City of Richmond, No. 72, October Term, 1945, decided February 25, 1946, this Court pointed out that the question of reasonableness in the due process or "jurisdictional" sense—there the fairness of a tax of only local factors should be considered—differs from the question to be decided when there are "other considerations of constitutional policy having reference to the substantial effects, actual and potential, of the particular tax in suppressing or burdening unduly the commerce." See also Leisy v. Hardin, 135 U. S. 100, 121-124.

[3] With Baldwin v. Seelig, Inc., 294 U. S. 511, contrast Nebbia v. New York, 291 U. S. 502, and with Schollenberger v. Pennsylvania, 171 U. S. 1, contrast Powell v. Pennsylvania, 127 U. S. 678.

miscellany of vehicles which do not arise in connection with trains whose movement is restricted to fixed rails and is usually controlled by a single operating agency. In these matters, peculiar to highway travel, this Court has from time to time concluded that regulations obviously appropriate to the protection of the state's special interests may be imposed even though a burden upon interstate commerce may result. But with reference to a subject matter, here the racial segregation of passengers, as to which the highest court of the state has said in this very case [4] that a policy of segregation is not peculiar to highway travel but applicable equally to travel by public carriers moving on railways, waterways or elsewhere, no special significance is attributable to the fact that a particular case arises out of highway travel.

Cases involving the relation of the commerce clause to various local regulations affecting highway travel show that the foregoing analysis is consistent with the adjudications of this Court.

Thus, while the state's interest in minimizing dangerous congestion peculiar to highway travel may justify its refusal to permit a motor vehicle carrier to operate over a particular state highway already overburdened with traffic,[5] the authority of the state is exceeded by a similar denial predicated not upon safety factors peculiar to highways, but rather upon its notions of the adequacy of service.[6] Likewise, while the state's interest in minimizing local loss from all too frequent highway collisions may sustain a statute requiring an interstate motor carrier to carry insurance or furnish bond to indemnify persons damaged as a result of its operations on state highways,[7] its legitimate interests are exceeded by a statute which requires the carrier to

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[4] See Record page 60.

[5] Bradley v. Public Utilities Commission of Ohio, 289 U. S. 92.

[6] Buck v. Kuykendall, 267 U. S. 307; Bush Company v. Maloy, 267 U. S. 317.

[7] Hicklin v. Coney, 290 U. S. 169; Continental Baking Co. v. Woodring, 286 U. S. 352.

afford indemnity to the interstate shipper.[8] Similarly, state laws imposing fees upon those using its highways for purposes of interstate commerce with a view to raising funds to defray the cost of maintenance, supervision and compensation for their use, are an appropriate exercise of state power,[9] but those exacting fees in excess of the amount necessary for such purposes go beyond the special local interest in maintenance and are invalid.[10]

In brief, the fact that commerce moves over state highways rather than on railways or elsewhere becomes important only where the interest which particular legislation seeks to subserve is peculiar to highways. No such consideration is involved where the issue is the power of the state to impose upon interstate commerce a fixed policy with respect to passenger seating, applicable alike to public carriers by rail, water or highway.

II

The Challenge to Appellant's Right to Contest the Constitutionality of the Statute Under Which She Was Convicted Is Groundless

The position of the Commonwealth that appellant is without sufficient interest to assert the unconstitutionality of the statute is predicated upon the erroneous view that she is asserting a right of the carrier. But appellant's position is that the statute burdens the commerce in which she was engaged, and of which she was a part, and was applied in such manner as to injure her. Appellant champions no interests other than her own, although in this case, as in others, judicial inquiry into the burden upon commerce goes beyond the impact of the questioned regulation upon the litigants.

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[8] Michigan Public Utilities Commission v. Duke, 266 U. S. 570.

[9] Hendrick v. Maryland, 235 U. S. 610; Kane v. New Jerseys, 242 U. S. 160; Morf v. Bingaman, 298 U. S. 407.

[10] Sprout v. South Bend, 277 U. S. 163; Interstate Transit v. Lindsey, 283 U. S. 183; Ingels v. Morf, 300 U. S. 290.

In raising the invalidity of the law appellant is not officious or an intermeddler. At the time the statute was enforced against her, appellant was making an interstate journey and in so doing was exercising her privilege to move freely from one state to another. Whether her right so to do has its source in the commerce clause, the 14th Amendment or the inherent character of Federal citizenship, its existence is freely conceded.[11] By the enforcement of the law her trip was interrupted and under it she was prosecuted. Unless she is afforded protection at the hands of this Court, she will be penalized in accordance with its provisions. If the law stands, the injury to appellant is plain.

It is now settled that the transportation of persons across state lines is interstate commerce.[12] Like the person whose goods are being transported in interstate commerce,[13] the passenger being transported therein is, with respect to such transportation, as much engaged in interstate commerce as is the carrier who furnishes the means of transportation.[14] In the freedom of that commerce from any unconstitutional burden appellant had a direct interest, and the decided cases have uniformly recognized her standing to complain.[15]

The basic fallacy in the Commonwealth's argument is the assumption that the statute burdens only the carrier. See

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[11] Crandall v. Nevada, 6 Wall. 35; see also Twining v. New Jersey, 211 U. S. 78; Williams v. Fears, 179 U. S. 270.

[12] Edwards v. California, 314 U. S. 160; United States v. Hill, 248 U. S. 420; Caminetti v. United States, 242 U. S. 470; Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204. These cases also show that the fact that the transportation is noncommercial in character is immaterial.

[13] Savage v. Jones, 225 U. S. 501; Leisy v. Hardin, 135 U. S. 100; Bowman v. Chicago & Northwestern Ry. Co., 125 U. S. 465

[14] Covington & C. Bridge Co. v. Kentucky, supra, at 218-219. See also the Federal Fugitive Felon Act, May 18, 1934, c. 302, 48 Stat. 782, 18 U. S. C. Sec. 408e.

[15] In many of the cases wherein the unconstitutionality of legislation of the kind involved in this case was established, the issue was raised by the passenger. Washington, B. & A. Elec. R. Co. v. Waller, 53 App. D. C. 200, 289 F. 598; McCabe v. Atchison, T. & S. F. Ry. Co., 186 F. 966 (C. C. A. 8th); Anderson v. Louisville & N. R. Co., 62 F. 46 (C. C. Ky.); State v. Jenkins, 124 Md. 376, 92 Atl. 773; Hart v. State, 100 Md. 595, 60 Atl. 457; Carrey v. Spencer, 36 N. Y. Supp. 886.

tion 5 of the Act, under which appellant was prosecuted, is directed solely against the passenger and seeks to control his conduct only. Moreover, the direct effect of the injunctions of the statute in terms addressed to the carrier and requiring him to segregate passengers extends to the passenger who is the victim and real object of the legislation. The carrier is by statutory compulsion merely the agency of the state to carry out an unconstitutional imposition. In such circumstances appellant may complain not only of those provisions of the law which specifically mention her, but also those which, by the simple expedient of compelling the carrier to act, accomplish and make mandatory an unconstitutional invasion of her legally protected interests.[16]

III

The Commonwealth Is Mistaken in Implying National Intent to Leave the Matter in Question to State Control

The brief of the Commonwealth suggests[17] that the failure of Congress to legislate upon the matter in controversy indicates a legislative intent that the states may so legislate.

There is no rational basis for such an inference. To the contrary, ever since *Hall v. DeCuir*, Congress must have understood that the states are without authority to regulate interstate commerce in the manner now attempted by Virginia. There is no occasion for legislation to accomplish that result. National legislation would be necessary only if Congress desired either to *give the states* the power denied them in *Hall v. DeCuir*, or to *take away from the carrier* the privilege of regulating the seating of passengers according to race.

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[16] Savage v. Jones, supra; Bowman v. Chicago & Northwestern Ry. Co., supra; Truax v. Raich, 239 U. S. 33; Buchanan v. Warley, 245 U. S. 60; Pierce v. Society of the Sisters, 268 U. S. 510.

[17] At pages 24-25.

Moreover, the one effort of Congress to regulate this matter occurred in the Civil Rights Acts.[18] The national policy against segregation in public places and upon public carriers was there stated in the clearest language. The persistence of such a policy as reflected by the Charter of the United Nations is mentioned in the conclusion of Appellant's original brief in this case. This Court, as recently as 1943, speaking through the Chief Justice, stated that "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."[19] And Mr. Justice Murphy, concurring in the case, expressed the same basic concept: "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals."[20]

Thus both the action of Congress and the language of this Court make it clear that national policy is opposed to racial distinctions in areas of national dominance or concern.

CONCLUSION

Wherefore, it is respectfully submitted that the contentions of the Commonwealth are without merit and that, for the reasons stated in the appellant's original brief and in this reply brief, the judgment of the Supreme Court of Appeals of Virginia should be reversed.

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[18] 18 Stat. 335.
[19] See Hirabayashi v. United States, 320 U. S. 81, 100.
[20] *Id.* at 110.

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BRIEF OF APPELLEE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 704

IRENE MORGAN
Appellant

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

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BRIEF OF APPELLEE

STATEMENT

On July 16, 1944, the Richmond Greyhound Lines, Inc., a motor vehicle common carrier of passengers licensed by the State to operate over certain Virginia highways extending from Norfolk to the District of

Columbia, was engaged in operating one of its busses over said route. Both interstate and intrastate passengers were being carried.

The appellant, a member of the Negro race, was a passenger upon said bus, and there were also white passengers thereon. Her journey was from Gloucester County, Virginia, to Baltimore, Maryland, which was also the destination of the bus. Sections one to four, inclusive, of Chapter 128* of the Virginia Acts of Assembly of 1930 impose upon carriers so licensed, and upon their operating personnel, the duty to assign to white and colored passengers separate seats on their motor busses, but forbids any difference or discrimination in the quality of the accommodations. The statute itself does not undertake specifically to regulate the subject, but it requires the carrier to do so. Section five of the Act makes it a misdemeanor for any passenger to refuse to occupy the seats so assigned or to fail or refuse to change such seat if directed by the operator of the vehicle in accordance with a lawful custom or regulation in force by the carrier. The operator is first required to advise the passenger of the fact of such regulation and request him or her to conform thereto. The carrier's rules and regulations required the seating of white passengers from the front of the bus backward and colored from the rear forward (R. 31). Appellant, at the time in question, was occupying a space two seats forward from the

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*Set out in full in appendix to appellant's brief as Michie Code, Sections 4097z to 4097dd.

long rear seat, which was partly occupied by colored passengers. There were a number of white passengers standing but no colored. The driver directed appellant to change to one of the vacant rear seats, which were forbidden to white passengers. The purpose of this was to make room for a standing white passenger. The driver at the time explained to her the regulations of the carrier which required her to change her seat in the manner requested (R. 31). Under its printed rule T-22 the carrier reserved full control of the seating of passengers and of changing such seating at any time during the trip (Exhibit A, p. 32). Appellant refused to leave the seat she was occupying (R. 32). Thereupon the driver, Kelly, secured a warrant for her arrest upon a charge of violating section five of said Act. (Copy of Warrant, R. 24-25). The sheriff in executing the warrant asked her to change her seat, but she again refused. Thereupon the officer placed her under arrest (R. 32, 37, 38). Appellant was tried first before the trial justice, found guilty, and a fine of ten dollars imposed on her. Upon her appeal to the circuit court, after a trial *de novo*, she was convicted of refusing to comply with the driver's request that she change her seat as required by said section five of the 1930 Act and the rule of the carrier. A like fine of ten dollars was then imposed (R. 27-28). The Supreme Court of Appeals of Virginia affirmed the conviction and from its judgment this appeal was allowed.

The appeal challenges the validity of the State Act making it a misdemeanor for an interstate passenger traveling over Virginia highways to wilfully violate the carrier's lawful regulation providing for the as-

signment of separate seats for members of the white and colored races, or to refuse to change his or her seat in accordance with such a regulation when requested by the operator of the bus. Appellant makes no claim of discrimination in the quality of the accommodations provided by the carrier for the colored passengers. The statute (section two) expressly forbids "any difference or discrimination in the quality or convenience of the accommodations provided for the two races".

THE CONSTITUTIONAL QUESTION PRESENTED

As appears from the appellant's petition for a writ of error in the Supreme Court of Appeals of Virginia, the only ground upon which it was claimed that the statute is unconstitutional was that the provisions with respect to the seating of passengers on the bus cannot be applied to an interstate passenger without running afoul of the commerce clause of the Federal Constitution, Article 1, Section 8 (R. 2-3, 7, 18). This was the only constitutional question considered in the opinion of the court below (R. 58). Appellant has not challenged the well established principle that statutory segregation of the white and colored races does not violate the Federal Constitution. See *Plessy* v. *Ferguson*, 163 U. S. 537; *Gong Lum* v. *Rice*, 275 U. S. 78.

This general question of the effect of the commerce clause upon appellant's rights, however, would seem to involve several subordinate ones; first, whether the commerce clause confers upon appellant, as an interstate passenger, any different status than that occu-

pied by an intrastate passenger on a bus; second, whether the provisions imposing upon the carrier operating over Virginia highways the duties with respect to separate seating arrangements constitute a prohibited burden on its interstate commerce operations, and, third, whether appellant has any standing to complain of the carrier's alleged burden in the absence of complaint by the carrier.

SUMMARY OF ARGUMENT

I. The fact that appellant was an interstate passenger conferred on her no constitutional right to occupy any space on the bus other than that assigned by the carrier to members of her race.

II. Even if it should be assumed that the provisions of the statute requiring the carrier to adopt rules and regulations for the separate seating of white and colored passengers cannot be constitutionally applied to the operator of an interstate bus or to the transportation of interstate passengers, yet if the carrier actually adopts such regulations they nevertheless are valid and binding upon all passengers to which the carrier applies them, and violation of them may be punished by the State.

III. The challanged statute is a reasonable, proper, and valid exercise of the police power of the State to regulate the use of its highways.

IV. The appellant is without standing to challenge the constitutionality of the Act on the ground that it places an undue burden on interstate commerce.

V. Reply to appellant's brief.

I.

The Fact That Appellant Was An Interstate Passenger Conferred On Her No Constitutional Right to Occupy Any Space On the Bus Other Than That Assigned By the Carrier to Members of Her Race.

There have been a number of decisions of various courts, some of which intimate and others of which hold that an interstate railroad or steamboat passenger, as such, is possessed of some nebulous right which exempts him from State police regulations. Many of them seem grounded on the now discarded principle that the commerce clause prohibited the exercise of any State police power which in any way regulated anything or person connected with interstate commerce by rail or water, whether it operated as a substantial burden thereon or not. Some of the decisions turned on the fact that the accommodations furnished the interstate passenger of one race were of inferior quality to those provided for the other, or that the accommodations actually furnished violated the passenger's contract with the carrier. In cases of this kind the conclusion that the passenger's constitutional or contractual rights were violated was unquestionably correct. But in the absence of discrimination in the quality of the accommo-

dations there can be no sound reason why an interstate traveler in a bus also transporting intrastate passengers should have any superior rights over the latter. Any Virginia statute which would have the effect of according to an interstate passenger in such a vehicle operated on Virginia highways the right to occupy a seat beside a member of either race, while denying this right to an intrastate passenger, would seem to violate the equal protection clause of the Fourteenth Amendment. The mere fact that one passenger will continue his travels beyond the State line cannot furnish a basis for a different classification which would justify the discrimination against another who is an intrastate passenger. That such a distinction would so result was pointed out by Mr. Justice Day in his dissenting opinion in *South Covington & Cincinnati Street R. Co.* v. *Kentucky*, 252 U. S., at page 408, where he said:

> "The provision for a separate compartment for the use of only *intrastate* colored passengers would lead to confusion and *discrimination*." (Italics supplied).

The decisions of this Court clearly deny any such superior right to the interstate passenger over the intrastate one, or vice versa, in so far as regulation by the carrier is concerned. The first case involving the rights of a passenger in this respect is *Hall* v. *DeCuir*, 95 U. S. 485. A Louisiana statute provided that passengers on all public conveyances should be accorded free access to all parts thereof regardless of race or color. The plaintiff, a colored person, became

an *intra*state passenger on a steamboat licensed under Federal statutes for the transportation of passengers on the Mississippi River between various points in numerous States. She was refused admission to a cabin set apart for white passengers and obtained in the State court a judgment for damages against the owner of the vessel. This court, after pointing out the confusion and inconvenience to the carrier which would result from compliance with the statute, held that it imposed a substantial *direct burden* on the interstate commerce which the vessel was licensed to engage in, and was engaged in, and was therefore invalid. Since Congress had not acted in this field, it was said, the owner of the vessel was free to adopt such reasonable rules and regulations on the subject as he deemed to the best interest of all concerned. The decision not only denied to any passenger *the right* to occupy a space set apart by the carrier for those of another race, but also, in effect, denied the power of the State by legislation to *confer any such right* with respect to an interstate vessel under circumstances which would unduly burden the carrier. *The sole test applied was the right of the carrier to regulate the subject*, free from *burdensome* State regulations, and this right was predicated upon the fact that the carrier was operating the *vessel* in interstate commerce on the navigable waters of, and under license from, the United States. It is significant that the opinion of the Court was careful to point out the difference in the effect of the commerce clause on a State's regulation of commerce conducted over its turnpike and ferries. The distinction was thus stated:

"* * * The same is true of turnpikes and ferries. By such statutes the States regulate, as a matter of domestic concern, the instruments of commerce situated wholly within their own jurisdictions, and over which they have exclusive governmental control except when employed in foreign or interstate commerce. As they can only be used in the State, *their regulation for all purposes may properly be assumed by the State*, until Congress acts in reference to their foreign or interstate relations. When Congress does act, the state laws are superseded only to the extent that they affect commerce outside the State as it comes *within the State*. * * *" (24 L. Ed. 548. Italics supplied).

Thus the reverse of the rule applied to steamboats on navigable waters was held applicable to the regulation of commerce on the highways. With respect to the latter, failure of action on the subject by Congress was said to have the effect, not of leaving such commerce *free from regulation*, but of leaving the States *free to regulate same*. The instant case, of course, involves the regulation of the use of the Virginia highways by a common carrier of passengers.

The next case dealing with this question is *Louisville, Etc., Railway Company* v. *Mississippi*, 133 U. S. 587. The State statute required the carrier to provide separate coaches or compartments for white and colored passengers on all trains operated within the State. The railroad company was convicted of violation of

the separate coach requirement. This Court held that only intrastate commerce was the subject of regulation, although it affected trains coming into and moving beyond the State. It was said that neither the statutory provisions, which required the assigning of passengers to appropriate coaches, nor the rights or privileges of interstate passengers were involved. The fact that the Act required the carrier to attach an additional coach at the State line on incoming trains was held not to be an undue burden on interstate commerce.

Twenty years later this Court decided the case of *Chiles v. C. & O. Railway Company*, 218 U. S. 71. It involved a state of facts strikingly similar to the case at bar. A colored passenger had purchased a ticket entitling him to first class passage from Washington, D. C. to Lexington, Kentucky. At Ashland, Kentucky, he had to change trains and entered a car set apart exclusively for white passengers. Under protest he was moved to a car provided for colored passengers only. He brought suit against the carrier for damages upon the ground that his *rights as an interstate passenger* were violated by such removal. This Court pointed out that the Kentucky court had held that the accommodations being equal, the interstate passengers had *no right* to ride in any particular coach, but that, independent of State statute, *the carrier had the right* "to establish such rules and regulations as will require white and colored passengers, *although they may be interstate*, to occupy separate compartments upon the train". (Italics supplied). The judg-

ment of the Court of Appeals of Kentucky that no rights of the interstate passenger were violated was affirmed by this Court.

The application of the rule, which has now become firmly established in this Court, that the validity of a State regulation of or affecting interstate commerce is to be tested by the extent of the burden imposed *on the carrier* in conducting its operations, was exemplified in the case of *South Covington & C. Street R. Co.* v. *Covington*, 235 U. S. 537, where some of the regulations challenged were held unduly burdensome *upon the interstate carrier* and therefore invalid, while others were sustained. A few years later, in applying the test to other statutory regulations imposed upon the same interstate carrier, a Kentucky statute requiring separate coaches or compartments for white and colored passengers was sustained as to the carrier's operations in Kentucky, *although eighty per cent of the passengers therein transported were interstate*. The court said, "the regulation of the Act affects interstate business incidentally and does not subject it to unreasonable demands." *South Covington & C. Street R. Co.* v. *Kentucky*, 252 U. S. 399, 403-4. In neither case did the opinion contain any intimation that the statutes might be invalid because of infringement of the rights of interstate passengers.

It is respectfully submitted in conclusion on this point that the decisions of this Court establish beyond question that an interstate passenger has no constitutional right to occupy a seat in the conveyance of a carrier contrary to its rules and regulations. Whether

any significance is to be attributed to the fact that the carrier's regulations on the subject were adopted pursuant to a State statute will next be considered.

II.

Even If It Should Be Assumed That the Provisions of the Statute Requiring the Carrier to Adopt Rules and Regulations For the Separate Seating Of White and Colored Passengers Cannot Be Constitutionally Applied to the Operator of An Interstate Bus Or to the Transportation of Interstate Passengers, Yet If the Carrier Actually Adopts Such Regulations They Nevertheless Are Valid and Binding Upon All Passengers to Which the Carrier Applies Them, and Violation of Them May Be Punished By the State.

The decisions just reviewed establish beyond question the right of the carrier to adopt the regulations here under consideration, in the absence of State regulatory authority over the subject. They are therefore valid unless the statute requiring their adoption has the effect of invalidating them. The carrier not only adopted the regulations but its agent, the operator, enforced them against appellant and had a warrant issued for her arrest for their violation, although the statute imposed no duty so to do. It may be argued that the carrier acted under the duress or compulsion of the statute, in ignorance of its rights, but there is no evidence upon which to base such a contention. The carrier has never challenged the statute nor has it appeared as *amicus curiae* in this case, either here or in the court below, to register any dissatisfaction or

protest. In none of the numerous cases in which railroad carriers have provided separate cars or coaches for white and colored passengers does it appear that said carriers failed to extend their regulations to cover interstate passengers. In *Chiles* v. *C. & O. Ry. Co.*, *supra*, the carrier so extended its rules though the Kentucky segregation statute requiring same was held inapplicable to interstate trains by the Supreme Court of that State. This circumstance, however, was held by this Court not to affect the validity of the carrier's rule as applied to the interstate passenger.

To hold, because a State statute requiring the carrier to separate its white and colored passengers cannot be applied to interstate passengers, that same would nevertheless have the effect of depriving the carrier of the right to adopt and enforce its own rules which would accomplish that purpose, would be to give greater effect to such a positive legislative requirement than was given to the prohibitory one in *Hall* v. *DeCuir*, *supra*, where this Court held invalid a State statute which prohibited such segregation. The effect of such a rule as this would be to enable a State to prohibit segregation of interstate passengers by the carrier by merely enacting a statute *requiring* it.

Section 3 of the Act, under which the appellant was convicted, provides that any passenger refusing to obey the directions of the driver or operator of the bus with respect to changing his or her seat in conformity with a lawful rule, regulation, or custom of the carrier, after same has been explained to the passenger, shall be guilty of a misdemeanor. This

statute is a reasonable exercise of the State's police power, to which no valid constitutional objection can be offered so long as it is held that the carrier's regulation is itself a lawful one. If the regulation of the carrier is not lawful, then the statute, by its terms, is not applicable.

III.

The Challenged Statute is a Reasonable, Proper, and Valid Exercise of the Police Power of the State to Regulate the Use of Its Highways.

The statute is designed to promote the safety of the highways, as well as the peace and comfort of the passengers. The requirement that the carrier assign separate seats to the members of the two races is intended to avoid racial unpleasantnesses, frictions, disorders, or riots, on the busses while in operation. Such occurrences endanger the safety, not only of the occupants of the busses, but of other vehicles using the same highways. The busses are huge vehicles, operate at high speed, and safety requires the constant attention of the driver to the roadway ahead. A flare-up among the passengers which would distract his attention for only a brief moment might result in a collision with other vehicles or in running the bus into a ditch and overturning it. Although the application of the requirement to a bus engaged in an interstate journey, or to an interstate passenger thereon, would constitute a regulation slightly affecting commerce, same lies within the well recognized field of the State's police

power to regulate the use of its highways, and also other local matters incident to such commerce, in the absence of congressional regulation thereof.

The right of the State to require segregation of white and colored passengers *by motor vehicle carriers* has apparently never been challenged before; at least no such case has been found. This Court has in recent years emphasized the very much broader and more far-reaching powers which the State may properly exercise over its own highways than over the operation of interstate railroads. The cases dealing with State regulation of local matters affecting commerce are numerous. They have been exhaustively reviewed in the opinion of Mr. Chief Justice Stone in the cases of *Southern Pacific Co.* v. *Arizona,* ..... U. S. ..... (decided June 18, 1945), 89 L. Ed. Adv. Op., p. 1469. The opinion is so recent and contains such a clear and concise epitome of the previous decisions relating to the States' regulatory powers over their *highways,* and the general principles flowing from these decisions, that it seems appropriate to quote same in full at this point:

> *"South Carolina State Highway Dept.* v. *Barnwell Bros.,* 303 US 177, supra, was concerned with the power of the state to regulate the weight and width of motor cars passing interstate over the *highways, a legislative field over which the state has a far more extensive control than over interstate railroads.* In that case, and in *Maurer* v. *Hamilton,* 309 US 598, supra, we were at pains to point out that there are few subjects

of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways. Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and economical administration. *Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic.* The fact that they affect alike shippers in interstate and intrastate commerce in great numbers, within as well as without the state, is a safeguard against regulatory abuses. Their regulation is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for the exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce (303 US at 187, 188, and cases cited)." (89 L. Ed. Adv. Op. 1469, 1481-1482. Italics supplied).

As pointed out by Justice Gregory in the court below (R. 64, 65), Congress has repeatedly resisted efforts to induce it to enact legislation to prohibit the segregation of interstate passengers, and his opinion concludes that "This continued refusal of the Congress to legislate in the segregation field demonstrates its desire that the matter be left where it is now; that is, that the several States, under their police power, be permitted to continue to legislate in this field, subject

only to the limitation that they shall not directly or unreasonably burden interstate commerce." Certainly with respect to the regulation of the use of State highways there can be no doubt as to the correctness of this conclusion. It is clear also that the regulation of the subject by the carrier as authorized by the Virginia statute is not such a prohibited burden.

NATURE OF THE REGULATION HERE INVOLVED

The statute requires only that the carrier assign separate seats to the members of the white and colored races, and change such assignments from time to time to conform to variations in the number of passengers of each race. It does not undertake to designate any particular part of the bus for use by either race, but does provide that the accommodations shall be equal in quality. It also imposes upon the driver or operator of the bus the duty to require each passenger to occupy a seat in the space assigned to members of his or her race, and vests him with powers of a conservator of the peace to enforce order thereon.

As to the burden imposed on the carrier in conducting its operations, it is insignificant compared to segregation requirements which have been imposed on railroads and have been sustained by this Court. Thus in *Louisville, Etc., Railway Co.* v. *Mississippi, supra*, it was necessary to attach an additional coach to an interstate train on entering the State, but this was held not prohibited by the commerce clause. The Virginia statute does not necessitate any different or additional equipment of any kind. Separate compartments are not even required.

In *Plessy* v. *Ferguson, supra,* "the preservation of public peace and good order" was recognized as the legitimate and proper objective of the statute (163 U. S. 550). Likewise a regulation for seating passengers "so as to preserve order and decorum, and to prevent contacts and collisions arising from natural or well known customary repugnancies which are likely to breed disturbances, where white and colored persons are huddled together without their consent" was said by Mr. Justice Clifford in *Hall* v. *DeCuir, supra,* to be a reasonable one. (24 L. Ed. 553.)

In *Alabama, Etc., R. R. Co.* v. *Morris.* 103 Miss. 511, the court, in sustaining a segregation statute, said:

> "A riot upon an interstate train growing out of the refusal of common carriers to recognize a situation known to every Mississippian—black and white—would endanger the lives and disturb the peace of all persons passengers on the train, intrastate and interstate; and we therefore decline to limit the application of the statute to intrastate commerce. Possessing the knowledge of local conditions common to all residents of our section, we confess some surprise that there was no sequal to the event described by the record."

The following is a quotation from a similar case, *Smith* v. *State,* 100 Tenn. 494:

> "* * * If it be true, as is sometimes said, that race prejudices exist here that make it un-

comfortable or unsafe or promotive of disorder to mix the races in public conveyances, then both safety and good order are promoted as well as comfort, in their separation. The State is to judge of the necessity for such a regulation. * * *."

The opinion of Mr. Justice Gregory in this case reflects the same line of thought. He said: "If the statute were held to be valid as to intrastate passengers and invalid as to interstate passengers, a condition would exist that would adversely disturb the peace and welfare." (R. 66,)

The prevention of racial friction, disorders and conflicts has always been the avowed and accepted basis for the enactment of segregation laws. Disorders or disturbances suddenly breaking out on a rapidly moving bus are fraught with far more dangerous consequences than on a railroad train. The fact that section 4 of the Act vests the driver or person in charge of the bus with the powers of a special policeman and conservator of the peace in the enforcement of order emphasizes the importance attributed by the legislature to the maintenance of peaceful conditions on the bus. Usually the driver is the only agent or employee of the carrier on the vehicle. It is imperative that his attention to his duties be not suddenly interrupted by disorders breaking out among the passengers as has been heretofore pointed out. Such an occurrence would not only endanger the safety of the bus and its occupants, but would imperil the safety of the highways. Other vehicles using them would be subjected to the threat

of collission with the bus if the driver's vigilance is diverted to the suppression of disorders. The burden rested upon appellant to show that the statute imposed an undue burden on interstate commerce. *Bourjois* v. *Chapman*, 301 U. S. 183, 187, 188. Yet no effort was made by her in the circuit court to introduce evidence to show that the statute is unreasonable or not supported by the facts or the conditions prevailing in Virginia. As said in *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 191-192:

> "* * * Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility. Hence, in reviewing the present determination we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis. *Standard Oil Co.* v. *Marysville*, 279 U. S. 582; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263. * * *"

A regulation so completely in accord with the established public policy of Virginia as expressed in the court below (R. 60), and with the customs and usages in many other States as appears from the numerous reported cases on the subject, cannot be found by this Court to be "without rational basis."

IV.

The Appellant is Without Standing to Challenge the Constitutionality of the Act on the Ground that It Places an Undue Burden on Inerstate Commerce.

The decisions of this Court heretofore discussed have clearly demonstrated that no constitutional right of an interstate white or colored passenger is violated by being required by the carrier to occupy the seating space assigned to members of his or her race. This is precisely the situation here presented. Before the statute could be considered an impermissible burden on commerce it would be necessary to show that the carrier is being hampered in its transportation activities. But the carrier is not complaining that any such burden or obstruction to its business results from the obligations imposed on it by the Act. In fact the carrier itself issued the regulations involved, and initiated the arrest and prosecution of the appellant for refusal to abide by its rules. Certainly the appellant has no standing to complain that the carrier is being unduly burdened. The only complaint the carrier has made was against the appellant for violation of its regulations. In order to prevail here the appellant "must show that the enforcement of the challenged judgment would deprive it (her)—not another—of some right arising under the Constitution or laws of the United States properly asserted below." *Liberty Warehouse Co.* v. *Burley T. G. Co-op. M. Asso.*, 276 U. S. 71, 88*. The

*To the same effect see also *Southern Railway Co.* v. *King*, 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Hendrick* v. *Maryland*, 235 U. S. 610, 621; *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576.

enforcement of the rules and regulations of the carrier have not deprived her of any right, nor has she any standing to complain of them or of the statute imposing a fine on her for their violation.

V.

Reply to Appellant's Brief

In her *summary of argument* appellant says:

> "For seventy years the decisions and pronouncements of this Court have consistently condemned state statutes attempting to control or require the segregation of Negro passengers moving in interstate commerce on public carriers as unconstitutional invasions of an area where national power under the commerce clause is exclusive. Unless the reasoning of those cases was or is unsound, they should be followed."

As a matter of fact, no case has ever been decided by this Court involving the validity of a State statute *requiring* segregation of white and colored *interstate* passengers. There have been intimations in cases involving *railroads* that such statutes *might* be considered unconstitutional if the question were before the Court, but the question has never been before the Court and no decision to that effect has ever been rendered. After all, each such case would have to stand upon its own facts and be subjected to the test applied in *Hall v. DeCuir, supra.* It might be considered more con-

venient for the railroad carrier to provide separate accommodations for white and colored interstate passengers in States having such requirements for local passengers than to undertake to make a distinction between them. In fact, the reported cases indicate this to have been the usual custom of railroads, independent of statute. The conclusion to be reached would necessarily depend upon whether the application of the statute, in any particular case, would constitute an undue burden on conducting the commerce involved. There has been no such case decided here involving a railroad. There has never been even an intimation with respect to the rule which would apply to a motor vehicle carrier in such a case in the absence of congressional action.

APPELLANT'S ARGUMENT

Appellant takes the position that *Hall* v. *DeCuir*, *supra*, conclusively establishes the principle that State statutes providing for separate accommodations for white and colored passengers "on public carriers" contravene the commerce clause. But the Court's opinion expressly says that its conclusions therein expressed do not apply to highways owned by the States. As heretofore pointed out in this brief, *Hall* v. *DeCuir* involved the sole question of the validity of a State statute *prohibiting* the carrier from providing such separate accommodations. It related only to a steamboat operating on navigable waters of the United States, which in crossing the river would at short intervals find itself

in different States. Under the facts in that case, the Court held the statute obnoxious to the commerce clause, because it imposed an undue burden on interstate commerce which was subject to the regulatory powers of Congress. "Inaction by Congress," it was said, "is equivalent to a declaration that interstate commerce shall remain free and untrammelled." But lest its decision might be interpreted as applying the quoted principle to State statutes regulating traffic on ferries and *highways* the Court took the pains to disclaim any such intention by saying:

> "* * * The same is true of turnpikes and ferries. By such statutes the States regulate, as a matter of domestic concern, the instruments of commerce situated wholly within their own jurisdictions, and over which they have exclusive governmental control except when employed in foreign or interstate commerce. As they can only be used in the State, *their regulation for all purposes may properly be assumed by the State*, until Congress acts in reference to their foreign or interstate relations. When Congress does act, the state laws are superseded only to the extent that they affect commerce outside the State as it comes *within the State*. * * *" (24 L. Ed. 548. Italics supplied.)

Thus, under this principle laid down in *Hall* v. *DeCuir*, Congress, by refusing to enact legislation touching this subject of segregation of passengers on busses has left to the State the regulation of same on

its highways. Congress has evidently taken cognizance of the obvious fact that local conditions are so different in the various States that no uniform regulations could be satisfactorily applied. And it recognizes also the proprietary interest of the States in such matters. The Commonwealth of Virginia has purchased and owns the fee simple title to its highways; it has built and constructed them; it repairs and maintains them in good condition; it patrols and polices them, and enforces obedience to traffic regulations and the general laws against crime. To require different regulations for intrastate and interstate passengers on busses would surround law enforcement on the highways with constant confusion and doubt. It would seriously impair the effectiveness of the use of the roads as an instrumentality of both local and interstate commerce. The necessity for such State uniformity of regulation with respect to its roads was recently emphasized by this Court in these words: "Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic." *Southern Pacific Co.* v. *Arizona, supra.* It is no doubt because of its recognition of the truth of this statement that Congress has declined to enact any regulation which would accord to an interstate passenger traveling over State highways any status different from that of the local citizen. The application of the separate seating requirements to local passengers alone would seriously jeopardize the safe operation of the bus. Instead of reducing the burden on commerce it would immeasurably increase it. There would be constant danger of quarrels, frictions and disturbances due to misunderstandings among the

passengers as to who are subject to the regulations and who are exempt from them.

Appellant's brief (pp. 12-14) quotes extensively from the Maryland case of *Hart* v. *State*, 100 Md., at 612-3. In this case the *railroad* had not promulgated any regulations with respect to seating arrangements and the view was expressed that should the case reach this Court the statutory regulations would be held inapplicable to interstate passengers. For this reason, the Maryland court construed the statute as embracing only intrastate travelers. But the opinion recognized the right of the railroad to adopt segregation regulations as to interstate passengers in States which do not have them. By the adoption of such regulations by the carrier the possibility of the occurrence of the frequent changes from one railroad car to another, which was suggested in appellant's quotation from the opinion could be readily obviated. However, the inconveniences depicted would have no application to passengers on a bus, where the only change is from one seat to another in the same vehicle. This is no more difficult than moving from one chair to another in the same room in one's home. The changing of seats by the passenger is a little thing compared with the resulting benefits in safety, peace and comfort, for there is a wide difference in the effect of disorder on a railroad train and on a motor bus. A disturbance in a railroad coach does not affect the engineer of the train, but such an occurrence on a bus almost certainly would disconcert the driver, endangering not only all the passengers, but also persons traveling in other cars on the highway.

Appellant repeatedly asserts that no element of safety is involved in the requirement of separate seats for white and colored passengers. And yet this case of *Hart* v. *State*, which she so strongly invokes, contains and approves the following quotation from a Pennsylvania case:

> "* * * 'In order to preserve and enforce his (the conductor's) authority as the servant of the company, it must have a power to establish proper regulations for the carriage of passengers. It is much easier to prevent difficulties among passengers by regulations for their proper separation than it is to quell them. The danger to the peace engendered by the feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro take his seat beside a white man or his wife or daughter, the law cannot repress the anger or conquer the aversion which some will feel. However unjust it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterward the breach of the peace it may have caused.' There are numerous cases to the same effect, many of which are cited in *Chilton* v. *St. Louis & I. M. R. Co.*, 114 Mo. 88, 19 L. R. A. 269; *Smith* v. *Chamberlain*, 38 S. C. 529, 19 L. R. A. 710; *Ex parte Plessy*, 45 La. Ann. 80, 18 L. R. A. 639; *Bowie* v. *Birmingham Ry.*

& Electric Co., 125 Ala. 397, 50 L. R. A. 632; and the notes to those cases, as reported in the L. R. A. series." (60 Atl., at p. 458).

The foregoing is undoubtedly a correct statement of the reasons underlying and necessitating statutes of this kind. However much we regret it, we must nevertheless face the truth and not deceive ourselves by idealisitc or wishful thinking. Virginia, along with many other States similarly situated, is confronted with a condition, not a theory. If this condition could be removed by the passage of a law or a decision of a Court, there would be none to oppose it. But laws cannot alter human nature or erase racial antagonisms. They are not confined to our country or to our people. They are world-wide. Only the great Master who created and endowed mankind with these infirmities can eradicate them. Until that occurs our government must be based upon the recognition that they still exist.

Appellant has not even attempted to show by the citation of any judicial decision that she was possessed of any right to occupy the seat from which she was requested to move. She bases her argument solely upon the alleged want of power in the State to regulate the conduct of an interstate passenger. To such a passenger she would accord a status immune from the laws which govern the citizens of Virginia engaged in local travel. But she cites no authority to sustain such a remarkable claim.

Appellant asserts that free movement through a State is a constitutional guaranty. This may be con-

ceded. But the free movement guaranteed does not mean immunity from State regulations imposed in the exercise of the police power which do not discriminate against the interstate traveler and are likewise applicable to the local citizen. But this does not satisfy appellant. She insists that free travel means discrimination in her favor and against a resident of the State through which she is passing.

Appellant repeatedly asserts that statutes of the kind here involved are based upon provincial notions which do afford a substantial basis for such legislation. But the quotation hereinabove from the Pennsylvania court would hardly justify this criticism. The people of that State had fought a long war to free the Negro from slavery and their legislature must be considered as motivated under then existing conditions by necessity rather than prejudice in passing legislation of this type. Certainly the decision of the court sustaining its validity so indicated.

Appellant also attacks the statute because some interstate travelers may have such an admixture of white and colored blood as to render it difficult for the agents of the carrier to determine whether they should be classified as white or colored. She does not claim to fall in that category, nor is the carrier complaining of any such burden. She therefore has no standing in this Court to attack the validity of the Act because it may possibly deprive other persons of some constitutional right, as the cases cited under point IV, *supra*, clearly show.

Appellant's arguments in the main constitute a challenge to the wisdom of the legislature in enacting the

statute. But this is a matter with which this Court is not concerned. In the absence of convincing evidence that conditions in Virginia do not justify the legislation, the presumption that it is supported by existing facts known to the legislature will be conclusive unless facts judicially known preclude that possibility.—*South Carolina State Highway Dept. v. Barnwell, supra.* The record contains no evidence at all on the subject. It would seem, therefore, that these arguments might more appropriately be addressed to Congress in advocacy of desired regulatory legislation than to this Honorable Court.

CONCLUSION

The judgment of the court below is clearly right and should be affirmed.

Respectfully submitted,

ABRAM P. STAPLES,
Attorney General of Virginia.

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Richmond 19, Virginia.

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA,

Appellee.

Appeal from the Supreme Court of Appeals of the Commonwealth of Virginia

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable the Supreme Court of the United States:

The undersigned, as counsel for the Workers Defense League, respectfully moves this Honorable Court for leave to file the accompanying brief as *Amicus Curiae*. The consent of the attorneys for the appellant to the filing of this brief has been obtained. The attorney for the appellee has failed to reply to repeated requests for such consent.

Special reasons in support of this motion are set out in the accompanying brief.

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Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN,

Appellant,

vs.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

The Workers Defense League is submitting a brief herein as *amicus curiae* because of its interest in the issue of race discrimination raised in this case.

The Workers Defense League is an organization dedicated to the protection and extension of those civil rights which are guaranteed by the laws and Constitutions of the United States and the several states.

It maintains that right to free and unrestricted travel in interstate commerce is one of the attributes of free citizenship and forms a part of the keystone of our democratic form of government. Any interference by a state or its political subdivisions based solely on race, creed or color is unwarranted and is calculated to create antagonisms between the peoples of the United States and threatens its peace, security, social and economic well being.

Statutes Involved

The Virginia statute primarily involved (Acts of Assembly, 1930, Chap. 128, pp. 343-344) is one entitled, "An Act to provide for the separation of white and colored passengers in passenger motor vehicles within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." This statute, now appearing as Sections 4097Z to 4097dd of Michie's Code of Virginia, 1942, is set out in full in the appellant's statement as to jurisdiction. Sections 4097Z to 4097cc are summarized in the Record (R., pp. 7, 8) and Section 4097dd is set out in full therein (R., pp. 8, 9).

Inasmuch as the statute in question uses the terms "white" and "colored" persons, it is necessary to refer to Section 67 of Michie's Code of Virginia, 1942, which defines the term "colored person". Section 5099a of Michie's Code, which defines the term "white person" for certain purposes is also relevant. These statutes are set out in the argument, below, so far as pertinent.

Questions Presented

The questions presented by this case and to which this brief is addressed are:

1. Is the Virginia statute (above cited) which provides for the separation of "white" and "colored" passengers in passenger motor vehicles valid insofar as it affects vehicles engaged in interstate transportation?

2. Is the statute contrary to the public policy of the United States, especially as embodied in Articles 55 and 56 of the Charter of the United Nations (ratified by the U. S. Senate July 28, 1945)?

It is noted that Question 2 was not raised in the Appellant's Statement as to Jurisdiction, but inasmuch as it has a bearing on the validity of the statute under which the appellant was convicted, it is both proper and helpful to discuss it in this brief.

Statement of the Case

On July 16, 1944, appellant, who is a Negro, was a passenger on a bus of the Richmond Greyhound Lines, Inc., traveling from Hayes Store in Gloucester County, Virginia, to Baltimore, Maryland, on a through ticket purchased by her from said company. The vehicle itself was traveling on a continuous and through trip from Norfolk, Virginia to Baltimore, Maryland, via Washington, D. C. During this journey, at Saluda, Virginia, the driver of the bus, a regular employee of the Richmond Greyhound Lines, Inc., in charge and control of the bus, directed appellant to remove from the seat which she was occupying in the front of the bus, to a seat in the rear pursuant to a design to segregate white and colored passengers in accordance with the herein and above-cited statute of Virginia. Appellant refused to move, whereupon the driver procured a warrant and caused her to be arrested upon a charge of violating the segregation law and particularly section 4097dd. Upon this charge she was tried and convicted.

The appellant was tried in the Circuit Court of the County of Middlesex, Virginia, upon an amended warrant charging that on the 16th day of July, 1944, she did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd." She was found guilty by the trial judge sitting without a jury, and on October 18, 1944, was sentenced to pay a fine of $10.

The conviction was affirmed by the Supreme Court of Virginia by the judgment which is the subject of the present appeal, the court holding that the segregation statute is "a reasonable police regulation"; that it is applicable to interstate commerce and that it does not violate the Fourteenth Amendment to the U. S. Constitution.

ARGUMENT

I. Introductory

Since the vehicle upon which the appellant was riding was engaged in interstate commerce, the statute violates Article I, Section 8 of the U. S. Constitution. Moreover, the statute is contrary to the public policy of the United States, and more particularly violates Articles 55 and 56 of the Charter of the United Nations, wherein all members pledge themselves to promote "• • • universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Furthermore, the statute is unconstitutional because it violates the Fourteenth Amendment, Section 1, of the U. S. Constitution in that it deprives persons of liberty without due process of law.

II. The Interstate Commerce Aspects

A. General Principles.

The law relating to the extent to which a state may, under its "police power", place a burden upon interstate commerce has been recently clearly defined in *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761. It was held in that case that the commerce clause (Art. I, Sec. 8) of the Federal Constitution, even without the aid of Congressional

legislation, protects against state legislation which is inimical to the national commerce; and in such cases, where Congress has not acted, this Court, and not the state legislature, is the final arbiter of competing demands of state and national interests (p. 769). In such cases, the question is whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference (pp. 770, 781).

B. Effect of permitting states to apply their segregation laws to interstate commerce is to burden and hinder such commerce.

The Virginia segregation statute is inherently burdensome to interstate commerce. If Virginia has the right to regulate the segregation of passengers in interstate vehicles, other states have the same right. It is obvious that the result of having the various states legislate in this field is necessarily to subject the carriers to non-uniform and conflicting regulations in the course of a single trip.

Where segregation statutes or regulations are in force and effect, carriers must and do supply separate facilities which add to the cost of operations. This undoubtedly results in increased costs to the public and resists otherwise justifiable reductions in passenger rates. These rates must be approved by the Interstate Commerce Commission and there is a direct relation between segregation to the free flow of Interstate Commerce under Article I, Section 8 of the Constitution.

Twenty states have enacted "Civil Rights Acts" prohibiting racial segregation in places of public accommodations: California, Colorado, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island,

Washington, Wisconsin, Maine and New Hampshire. On the other hand, thirteen states provide by statute for some measure of racial segregation of passengers on public carriers: Alabama, Arkansas, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

Moreover, there is no uniformity in the latter states as to who is a "colored person" or "Negro". These terms have been variously defined as including all persons in whom there is ascertainable any Negro blood whatsoever; all persons of Negro or African descent; those who are of Negro blood to the third generation inclusive; those who are of Negro blood to the fourth generation inclusive; those who have one-fourth or more Negro blood; and those who have one-eighth or more Negro blood. It is evident that the same passenger in making a trip across state lines might be classified as a colored person in some states and as a white person in others.

The segregation laws throw the burden of ascertaining the race of each passenger on the employees of the carrier. The Virginia statute, which is typical in this respect, provides that the bus driver shall be "the judge of the race of each passenger whenever such passenger has failed to disclose his or her race" (Sec. 4097*cc*, Michie Code, 1942). Many persons have no way of knowing whether they have, for example, one-eighth, one-sixteenth, one-thirty-second or for that matter, any Negro blood, as the requisite genealogical data is in most cases inadequate, inaccessible or entirely missing. To throw this burden on the bus driver is clearly unreasonable and obviously cannot result in accurate determinations.

It is therefore submitted that the effect of permitting states to apply their segregation laws to interstate commerce clearly burdens and hinders such commerce.

C. The exercise of the police power in the guise of the segregation laws cannot be justified to permit state interference with interstate commerce.

The recent decision of this court in *Southern Pacific Co.* v. *Arizona, supra,* reaffirmed in passing, the doctrine of *Hall* v. *De Cuir,* 95 U. S. 485, in the following language:

> "• • • the commerce clause has been held to invalidate local 'police power' enactments • • • regulating the segregation of colored passengers in interstate trains, *Hall* v. *De Cuir,* supra, 488-9."

It is submitted that *Hall* v. *De Cuir* is here squarely in point and should be applied accordingly.

The state court has attempted to distinguish the present case from *Hall* v. *De Cuir* case on the ground that the statute in the latter case prohibited racial segregation, whereas the Virginia statute makes segregation mandatory. The court also stated that "it is apparent that the Louisiana Act was not enacted in pursuance of the police power of the State, while the Virginia Act was enacted under the police power".

Concededly, the Louisiana statute prohibited segregation and the Virginia statute compels it. This is the head and tail of the same coin and it is by no means apparent that the former statute was not enacted in pursuance of the police power and that the latter was. To make such an assumption is to assume that the police power may be used only to create divisions among the people and not to create conditions conducive to unity. Such an interpretation of the police power is extremely far fetched and the Virginia court has disclosed no authority for it. On the other hand, many states and federal courts have held that statutes compelling segregation are not applicable to interstate carriers. *Washington, B. & A. Elec. R. Co.* v. *Waller,* 53 App. D. C. 200, 289 Fed. 598; *Thompkins* v. *Missouri, K. & T. Ry. Co.* (C. C. A. 8th), 211 Fed. 391; *McCabe* v. *Atchison, T. & S. F. Ry. Co.* (C. C. A. 8th), 186 Fed. 966; *Anderson* v. *Louisville & N. R. Co.* (C. C. Ky.), 62 Fed. 46; *Brown* v. *Memphis & C. R. Co.* (C. C.

Tenn.), 5 Fed. 499; *State* v. *Jenkins*, 124 Ind. 376; *Hart* v. *State*, 100 Md. 596; *Carrey* v. *Spencer* (N. Y. Sup. Ct.), 36 N. Y. S. 886; *State ex rel. Abbott* v. *Hicks*, 44 La. Ann. 770.

It is hence submitted that under the authority of *Southern Pacific Co.* v. *Arizona* and *Hall* v. *De Cuir*, above discussed and in view of the other cases cited, the Virginia segregation act is not such an exercise of police power as will make inapplicable the general rule safeguarding interstate commerce from state interference.

D. The Virginia statute as applied to interstate commerce is unreasonable, arbitrary and capricious and not a valid exercise of the police power.

If we concede for purpose of argument only, that segregation may be a valid exercise of the police power, this statute, far from being a reasonable exercise, is wholly arbitrary and capricious.

The statute uses the terms "white" and "colored" persons. "Colored persons" are defined in Section 67 of Michie's Code of Virginia as follows:

> "§67. COLORED PERSONS AND INDIANS DEFINED.
>
> Every person in whom there is ascertainable any negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes living on reservations allotted them by the Commonwealth of Virginia having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on said reservations."

The only definition of "white persons" appearing in Michie's Code is that given in the statute dealing with inter-racial marriages. This statute, which is Section 5099a of the code, recites in its penultimate paragraph:

> "For the purpose of this act, the term 'white person' shall apply only to the person who has no trace what-

> soever of any blood other than Causasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons."

The term "colored person" is so defined as to include all persons having any ascertainable Negro blood, except for persons having certain admixtures of American Indian blood. If this definition of "colored person" were to be strictly followed, especially in view of the definition of "white person" given in Section 5099a of Michie's Code, there would be very few, if any, persons sitting in those sections of vehicles assigned to "white persons". It is a well known anthropological fact that mankind has been migrating and inter-breeding since the earliest times. Almost all persons have innumerable descendants whose quantum of Negro blood would not be observable in their features.

Section 4097z to 4097dd of Michie's Code of Virginia, 1942, imposes on the driver the duty and obligation, under criminal penalty, to determine the racial identity of a person on the basis of physical appearance alone.

Likewise the passenger is under criminal penalty to segregate himself, yet this duty with its severe penalty must be met regardless of the ill-defined and tenuous nature of the definition of "white" and "Negro".

The Supreme Court of the United States has ruled in *Lanzetta et al.* v. *State of New Jersey*, 306 U. S. 451, at page 453:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

The statute in question therefore violates the due process of law contained in the Fourteenth Amendment.

But, accepting, in arguendo, the proposition that all or a majority of persons who designate themselves as white

have not the slightest quantum of Negro blood, it is apparent that the statutory definitions violate the principles of fair and logical classification. If the term "white person" is restricted to those presumed to be 100% white, then why should "colored person" not be defined analogously, i.e., a person who is 100% Negro. Conversely, if a "colored person" is one who has any ascertainable Negro blood, why isn't a "white person" one having any ascertainable white blood?

The only apparent answer is that the definitions were not found on any level of reason and intellect but on the lower level of prejudice. For no intelligent person guided solely by his reason could have arrived at such definitions. And where reason is thrown into the discard in writing a definition, it cannot be pretended that either the definition or any statute depending on it is reasonable.

Although the segregation statute and the definition on which it rests are obviously drawn in accordance with those notions of "white supremacy" which are prevalent in the South (cf. "Racial Purity Act", Sec. 5099a of Michie's Code, *supra*) the fact is that it is really more discriminatory against "white persons" than against "colored persons". For a "white person", in a public vehicle, can sit only next to another "white person", that is, a 100% white, while a colored person may sit next to persons of varying blood mixtures. For example, a 100% Negro may sit next to one who has only one-eighth or one-thirty-second of Negro blood. Obviously, the "colored persons" have a much wider range of company.

Another respect in which the statute is arbitrary and discriminatory is that it tends to discourage and obstruct inter-racial friendships. It works a hardship on those having friends of the other "race" by not permitting them to sit together in public vehicles. Furthermore, by placing the stamp of official disapproval on inter-racial mingling, it prevents the growth of friendship and tolerance between the "races" and perpetuates whatever existing suspicion and hostility there may be.

The state court held that this statute, which enforces segregation is a valid exercise of the police power (R., pp. 60, 61, 68). It is not apparent how any statute can be a valid exercise of the police power unless it furthers the health, safety, comfort or morals of the people. The state court has not indicated how any of these desiderata are furthered by segregating the people according to race. Presumably, however, the theory is that segregation makes for more peaceful relations between the races. This can only be based on the assumption that two groups can best grow to understand, tolerate and respect each other by having as little to do with each other as possible. Observers of the current scene have concluded that segregation does not promote tolerance and mutual understanding, but on the contrary, suspicion and hostility. Two such observers, namely, Alfred McClung Lee, Chairman of the Department of Sociology, Wayne University, and Norman Daymond Humphrey, Assistant Professor of Sociology, Wayne University, in their book, "Race Riot" (New York, N. Y., Dryden Press, Inc., 1943), commenting on the rioting which occurred in Detroit, Michigan, during the week of June 20, 1943, draw the following conclusions from their observations and studies:

> "The three most constructive lessons of the Detroit week of June 20, 1943, point to the three effective ways of implementing the Golden Rule, three of the most practical objectives that emerge as goals for a long-term program. These objectives in the fields of (1) living, (2) learning, and (3) working point vividly to the virtue of the homely expression that 'you can learn to like most anyone if you get to know him.' Here are the senses in which we refer to living together, learning together, and working together.
>
> '1. Through experiences in neighborliness, or even in mere nearness, we can learn to live nearby people of another race without antagonistic racial frictions. In the Detroit riots, let us note again, observer after observer reported that no noteworthy trouble occurred in mixed districts where

whites and Negroes had lived as neighbors long enough to get to know and understand each other.

"2. Through the casual experience of classroom and playgrounds, white and Negro children and adults can learn to associate with one another in schools and colleges without antagonistic racial friction. Disorders between whites and blacks have taken place in Detroit's high schools, especially one that resulted in the stabbing of a student in 1941 at Northwestern High School. But that very uncommon incident emphasized by its uncommonness the rule that schooltime associations diminish race frictions. After all, the students of Wayne University—in the heart of Detroit—went about their business on Monday, June 21, 1943, without any reported friction. "Going to school together" works powerfully against intolerance, especially when the school administrators and teachers count this lesson among their objectives.

"3. Through the common experiences of shop work and union activity, whites and Negroes learn to appreciate each other's better qualities and to recognize their rights as fellow human beings. Here again occasional apparent exceptions develop, such as the Klan-inspired Packard strike that demanded the discriminatory treatment of Negroes, but the details of such cases indicate they are not actual exceptions: The Packard strike was inspired by the Ku Klux Klan. As Major General Henry S. Aurand declared on Bloody Monday, there were no disturbances in the Detroit war plants, and U. S. Attorney General Francis Biddle later substantiated this observation'" (p. 140).

Further light on the beneficial effects of close proximity is cast by an installment of the Extension of Remarks of Representative Helen Gahagan Douglas of California, appearing in the Congressional Record, January 28. Representative Douglas presented material, gathered from the War Department, on the war record of Negro soldiers. The January 28th installment contains the following significant passage (p. A274):

"Negro rifle platoons fought with the First, Second, Eighth, Ninth, Sixty-ninth, Seventy-eighth, Ninety-ninth and One Hundred and Fourth Infantry Divisions of the First Army; and Negro companies joined armored infantry battalions of the Twelfth and Fourteenth Armored Divisions.

"'If comments of white personnel of these divisions are any indication, the plan of mixing white and colored troops in fighting units, a departure from previous United States Army practice, is operating successfully', a Stars and Stripes staff writer reported in an article in the paper's April 6 issue.

"Negro reinforcements reported a sincere, friendly welcome everywhere. They also spoke of excellent relations with their white fellow-doughrs, of the making of inter-racial friendships.

"One company commander's comment was typical. 'The integration of the Negro platoon into this unit was accomplished quickly and quietly. There was no problem'."

It may be pointed out that the District of Columbia and the State of Maryland have substantial colored populations yet there is no segregation on public carriers and there is no evidence that any violence or racial tension has been engendered or aggravated by such non-segregation. For this and other reasons indicated, the Virginia segregation statute is not a reasonable exercise of the police power, but is unreasonable, arbitrary and capricious.

III. The Virginia statute is inconsistent with Articles 55 and 56 of the Charter of the United Nations

The Charter of the United Nations embodies the public policy of the United States. Moreover, inasmuch as the Charter is a treaty, duly made by the President of the United States and ratified by the Senate (Art. 2, Sec. 2, clause 2 of the Constitution), it is the supreme law of the land (Art. 6, clause 2 of the Constitution) and must thus prevail over inconsistent state enactments. *U. S.* v. *Pink*, 315 U. S. 203; *U. S.* v. *Belmont*, 301 U. S. 324; *Nielsen* v. *Johnson*, 279 U. S. 47; *Maiorano* v. *Baltimore, etc.*, 213 U. S. 268; *Baldwin* v. *Franks*, 120 U. S. 682.

Article 55c of the United Nations Charter provides that "the United Nations shall promote * * * universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

Article 56 states: "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

The United States, as a member of the United Nations, is hence pledged to promote "respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". It is urged that this pledge is binding upon the United States and the tribunals thereof, at least to the extent that it must prevail over inconsistent state enactments. Even if it be held that the pledge is not binding to such an extent, and that it is merely a statement of national policy, as such it would still preclude the application of inconsistent state statutes affecting interstate commerce.

Article 55c of the United Nations Charter is intended to prevent any distinctions as to race, sex, language or religion from being written into legislation or official regulations of any sort which concern human rights or fundamentals freedoms. It is contended that the expressions "human rights" and "fundamental freedoms" encompass the right to travel in public vehicles unmolested, the right, in public places and vehicles, to sit together with friends regardless of differences in race and the right not to be segregated against one's will. It is urged that the expression "without distinction" goes much further than merely forbidding discriminatory practices. It forbids segregation, even when accompanied by equal facilities.

The Virginia segregation statute is especially violative of the provision in question of the United Nations Charter, in that it clearly makes a distinction in the very definitions of "white persons" and "colored persons". As brought out hereinabove, the term "colored person" is defined to include

all persons having any ascertainable Negro blood (except where such persons are classed as American Indians). The existence of non-analogous definitions of "white" and "colored" persons is obviously a discriminatory definition.

The attention of the Court is respectfully directed to *Re Drummond Wren* [1945], O. R. 778; decided by the Supreme Court of Ontario, October 31, 1945, wherein Article 55 of the United Nations Charter was cited (p. 781) as indicating that the public policy of Canada, a subscriber to the Charter, was opposed to restrictive covenants prohibiting the alienation of land to "Jews and persons of undesirable nationality". Such a covenant was accordingly held invalid. It is believed that the reasoning in that case is entitled to studied consideration. In construing a section of an international agreement or treaty, the construction given to that section by another signatory nation is of some force and effect.

In the present case, as in the Canadian, there is at issue a practiced discrimination and distinction based upon "race", and it should be stricken down no less firmly than it was in Canada.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the Supreme Court of Appeals of the Commonwealth of Virginia should be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN, *Appellant*

v.

COMMONWEALTH OF VIRGINIA, *Appellee*

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF IN SUPPORT THEREFOF

AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE

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OCTOBER TERM, 1945

No. 704

IRENE MORGAN, *Appellant*,

v.

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ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court:

The undersigned as counsel for the American Civil Liberties Union respectfully moves the Honorable Court for leave to file the accompanying brief in this case as Amicus Curiae. The consent of the attorney for the appellant to the filing of this brief has been obtained. Counsel for appellee has failed to give his consent.

Special reasons in support of this motion are set out in the accompanying brief.

GREGORY HANKIN,
Counsel, American Civil Liberties Union, Amicus Curiae.

March 4, 1946.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 704

IRENE MORGAN, *Appellant*,

v.

COMMONWEALTH OF VIRGINIA, *Appellee*.

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Statement of the Case

This appeal involves the constitutionality of the law of Virginia segregating white and colored passengers in public conveyances by motor vehicle within the State. The statute under consideration is Chapter 128, pages 343-4 of the Acts of Assembly, 1930, reproduced in Michie's Code of Virginia, 1942, Sections 4097z-4097dd. It was upheld by the Virginia Supreme Court of Appeals on June 6, 1945. 184 Va. 24, 34 S. E. (2d) 491.

As applied to the facts of this particular case, the state law is attacked as being in conflict with the Commerce

Clause (Art. I, Sec. 8, cl. 3) of the Federal Constitution. Apart from its application, the law is attacked as being on its face repugnant to the due process and equal protection clauses of the Fourteenth Amendment.

I

The Statute is unconstitutional as a substantial burden on interstate commerce.

It is submitted that the law under consideration is bound to constitute a burden on interstate commerce in two respects: (a) it imposes a burden on the carrier, and (b) it imposes a burden on the passenger.

(a) *Burden on the Carrier.*—It is well established that every passenger carrier by motor vehicle, by virtue of the fact that it is a public utility, must render service equally and without discrimination. To observe this fundamental requirement and yet to treat passengers as being divided into separate and segregated classes, necessarily requires some duplication of service. If the accommodations are not duplicated, then the quality of service must suffer. In practice, the quality of the service is reduced for the less favored class, with the result that there is discrimination in the rendition of the utility service. Only by remaining blind to the latter fact, may it be said that there is no burden on interstate commerce, when a statute requires that either separate buses, separate compartments in buses, or separate seats be provided for white and colored passengers. If it is assumed that there is no discrimination, it must also be concluded that the statutory requirement imposes a burden on interstate commerce in the sense that there is an economic burden imposed upon the carrier.

The court below seems to rely on the case of *So. Covington, etc., R. Company* v. *Kentucky*, 252 U. S. 399, for the proposition that the requirement of separate facilities for white and colored passengers is merely an incidental and indirect burden on interstate commerce. In that case, however, the interstate transportation was incidental to the transportation service rendered by the street railway company, which operated an interurban service in the State of Kentucky, and had a terminal across the river in the City of Cincinnati. Here the appellant was a passenger on the Greyhound Bus Lines, travelling on a through ticket from Hayes' Store, Gloucester County, Virginia, through the District of Columbia, to Baltimore, Maryland. The interstate trip was not a mere incident to an intrastate operation. Here the test is whether the bus line could furnish separate buses, compartments, or seats, so as to render equal service and yet not be subjected to a substantial economic burden, especially at this time, when transportation facilities are most difficult to obtain. We think it is a matter of common knowledge, therefore one not requiring proof by evidence, that the statute does impose a burden on the interstate carrier.

Even if the *So. Covington* case were applicable to interstate transportation by railroad or other similar means of transportation, it must be pointed out that bus transportation is essentially different in this respect. It may be argued that so long as the number of passengers would justify it, a railroad may attach additional cars of equal quality, or may divide a car into separate compartments. In bus transportation such equal division of facilities cannot be accomplished. It is the same bus, with but one entrance that must accommodate all passengers as and when they board the bus. The burden on the carrier

imposed by the requirements of this statute extends also to the operation of the bus. In the case of a railroad train, the engineer is in charge of the physical movement of the train while the conductor is in charge of the conduct of the passengers thereon. The duties of the conductor in this respect do not interfere with the duties of the engineer. An interstate bus is operated by one person, the driver. If he is to police the location (seating and standing) of the passengers, that must interfere with the movement of the vehicle in interstate commerce. The requirements of this statute must of necessity interfere with the proper scheduling of the interstate movement.

The court below, however, stressed the fact that the carrier was not complaining of any burden imposed on interstate commerce, and that "in fact the carrier was not even a party to this litigation." Apparently the court below invoked the rule that a person has no standing to attack the constitutionality of a statute on the ground that it invades the rights of someone else. *Hebring* v. *Lee*, 280 U. S. 111. But this rule is not in point where a passenger complains that an economic burden is imposed on the carrier. The carrier, as a public utility, is only a means for rendering a service to the public with capital furnished by the investor. The charges made by the carrier are based upon payment by the passengers of all costs of operation plus capital charges. In the last analysis, therefore, it is the passenger that pays all costs, and any requirements, imposing additional economic burdens on the carrier, ultimately impose those burdens on the passengers. Therefore, the passenger has standing to complain of this additional burden, when it is applied to interstate commerce.

(b) *Direct Burden on the Passenger.*—Interstate commerce is also burdened by the statute under consideration

in the sense that the passengers in interstate commerce are directly subjected to wholly unnecessary and unreasonable inconvenience and discomfort. It is a matter of common knowledge that with the reduction in the manufacture of transportation facilities and the great increase in the amount of travel by bus in interstate commerce, passengers often travel "packed like sardines." To illustrate how the statute affects bus travellers, one may imagine a bus full of passengers traveling from Baltimore, through the District of Columbia, to Norfolk, Virginia. While these passengers are in Maryland and the District of Columbia, they occupy whatever seats are available, and when the number of passengers exceed the number of seats, the newcomers occupy such standing room as is available. As passengers leave the bus, the standees occupy the seats left vacant. As soon as the bus comes into the State of Virginia, however, the carrier invokes its regulation, made pursuant to the statute, that colored passengers must be seated from the rear forward, while white passengers must occupy the seats from the front to the rear. A reshuffling must take place, so that there would be a distinct separation of the two classes of passengers. Those sitting in front may be required to occupy seats in the rear; those occupying seats may be required to stand. Assuming that the passengers have already been pushed about and reshuffled, so as to comply with the requirements of the statute, the bus may come to a stop where some white and colored passengers are discharged and others are taken on, with the result that another reshuffling may have to take place. There is a distinct difference between the quality of service that the interstate passengers, both white and colored, receive in the State of Virginia, from what they receive in the State of Maryland and in the District of Columbia. In

Virginia, the interstate passenger is not certain that, once he has obtained a seat, he can ride in peace and comfort to his destination. On the contrary, passengers have been so pushed about and have been so subjected to discomfort and humiliation, that they and the exasperated driver have resulted to physical violence, which has resulted in serious injury and even death.

Here again, even if it were said that a statute of the character here involved would not constitute a burden on interstate commerce as applied to transportation by rail, the facts relating to bus transportation are so different as to leave no doubt that there is a definite burden on interstate commerce as applied to motor carrier transportation. Unlike a railroad train, a bus is a single operating unit; unlike a railroad car, it has only one entrance, and is not readily divisible into two sections which may be said to be equally desirable. In the rear of the bus, as in the instant case, there is one long bench set against the back of the vehicle and running its whole width which is less comfortable than the double seats on either side of the aisle. The motion of the vehicle and the gasoline fumes are more objectionable at the rear of the bus. When passenger travel is heavy, the aisle of the bus is crowded with standing passengers. If the bus is so divided that the rear seats are allocated to the Negro passengers, they must push and jostle the standing passengers both when entering and leaving the bus, even though they may be going only to the next stop. They are not only allotted less desirable accommodations, but are subjected to other acts of discrimination which will be discussed later under the heading of equal protection. What we emphasize here is that these passengers are deprived of their right to equal and non-discriminatory

service by a public utility operating in interstate commerce.

Therefore, we submit that quite apart from the economic burden on the carrier, the statute imposes a burden on the passengers engaged in interstate commerce and particularly on the negro passengers in such commerce.

II

The statute is unconstitutional under the due process clause of the Fourteenth Amendment.

The statute is unconstitutional for the reasons that it subjects passengers to arbitrary power vested in bus operators, it fails to establish a standard of guilt which may be made the basis of criminal prosecution, and is otherwise arbitrary and unreasonable on its face. It is urged that for these reasons the act must fall as in violation of the due process provision of the Fourteenth Amendment.

One must view realistically the provisions of this law and the facts with which it assumes to deal. In this connection, we shall limit ourselves to such facts as are matters of common knowledge.

(1) The statute requires all motor vehicle carriers in the state to separate white and colored passengers and makes the failure, neglect or refusal so to segregate them a misdemeanor (Sec. 4097z). True, the statute also requires the carrier to "make no difference or discrimination in the quality or convenience of the accommodations provided for the two races" (Sec. 4097aa). But failure, neglect or refusal on the part of the carrier to obey this requirement is not made a misdemeanor.

Accordingly, some seats in the rear of each bus are usually designated for colored persons, while the seats to the front of the division line are reserved for whites. In some instances, as in the case at bar, the carrier posts a general rule that colored passengers will be seated from the rear forward, and white passengers will be seated from the front. In such instances, the initial division line is determined by the white passenger occupying a seat farthest toward the rear.

So long as there are ample seats available on both sides of the division line, both white and colored passengers can ride in comparative comfort, although some passengers, whether white and colored, do prefer the front seats, while others choose to sit in the rear. If, however, there are more white passengers than the number of seats available for them, or more colored passengers than the number of seats available for them, they must remain standing either in the front or the rear of the bus without occupying such seats as may be vacant beyond the division line. This, itself, is arbitrary, unreasonable, capricious and oppressive.

(2) The driver or operator of the bus is authorized and obliged by the statute to change the division line when such change is "necessary or proper for the comfort or convenience of the passengers," and to require any passenger to change his seat as it may be "necessary or proper." Failure, neglect or refusal to observe this provision is a misdemeanor (Sec. 4097bb). The words "necessary or proper" whether with or without the qualifying phrase "for the comfort and convenience of the passengers" may be a standard, but it is a standard so broad and indefinite that the driver of the motor vehicle can hardly be subjected to criminal prosecution without violating the due process clause.

In practice, this requirement operates not to impose any obligation on the driver, but rather to clothe him with arbitrary power. As colored passengers board the bus, they go to the rear; and as white passengers board the bus, they remain in the front. After all the colored seats are occupied, the colored passengers must stand in back of the division line. So long as nothing is done by the driver, the colored passengers must crowd in the rear, even if there are more passengers than space available, even if they must violate the physical law that no two bodies can occupy the same space at the same time. However, the bus driver may come to the rescue and ask the white passengers to move up toward the front. Then it is up to the white passengers to move up. So long as there is a single white passenger who fails or refuses to move up, whether because he finds it difficult, or inconvenient, or is simply unwilling to oblige, the colored passengers may not occupy the vacant seats. Finally, if the driver insists on his authority, he may stop the operation of the bus and change the dividing line, either by moving the designation or by informing the white passenger of the rule requiring him to change his seat. Then, the white passenger, under the statute, must move up.

All this lies within the arbitrary judgment of the driver. No matter how the passengers may be inconvenienced, so far as the question of seating or standing room is concerned, the driver can always take refuge in the consideration that the bus must move on to its destination and that travel should not be interrupted for the purpose of moving the dividing line to the front or rear, in order to accommodate some of the passengers. Of necessity, the determination of this question must be left entirely to the judgment of the driver. In fact, the greater the need to accommodate the passengers by mov-

ing the dividing line, as, for example, when many passengers board or leave the bus at the various stops, the greater also is the need to let them suffer, else the buses will not operate according to schedule. Obviously, this cannot be said to be reasonable legislation regulating transportation.

(3) For the purposes of this law, the driver is the judge of the race of each passenger, whenever the passenger fails to disclose his or her race (Sec. 4097cc). What constitutes sufficient "disclosure" of race is not provided for by the statute. Obviously, the statute does not mean that if the passenger claims to be of one race or another, the claim is binding on the driver. Here again this criminal statute is so lacking in definiteness as to be violative of the due process clause. However, there are still further difficulties. What about those instances where a person, no matter how dark in complexion, or how light, is unable to state with any assurance that he is either white or black? The statute clothes the bus driver with authority to determine facts about which anthropologists have been battling for years. Such methods of determining racial status may be quite in order where people are ruled by absolute decree. There it may be proper to determine that Japanese are Aryans, while others (of the white race) are not. There it may be proper for some Goering to say: "Wer ein Jude ist, bestimme ich." (I determine who is a Jew.) But under our Constitution, it is improper even for a legislature to determine by fiat facts which are properly the subject of proof. *Manley* v. *Georgia*, 279 U. S. 1. Such determination of fact cannot be left to the operator of a motor vehicle.

(4) Each passenger must occupy the seat assigned to him by the driver and must obey his directions to change

his seat from time to time as occasions require, "pursuant to any lawful rule, regulation or custom." (Sec. 4079dd). Failure to obey is a misdemeanor. Thus, the passengers, both white and colored, may not be permitted to ride unmolested in peace and comfort, save at the will of the driver. He may require them to change their seats any number of times for any reason, and have them occupy any seats he selects for them, so long as no two contiguous seats are occupied by white and colored passengers (Sec. 4097bb).

(5) One further illustration will dispel any doubt as to the arbitrary and unreasonable character of the statute. The Virginia law provides that if a passenger does not obey the driver's direction to occupy the seat designated, or to change seats, he may be ejected; and, if he is ejected, neither the person ejecting him, that is the driver or operator of the bus, nor the owner of the bus, nor the manager, nor the bus company, is liable in damages in any court (Sec. 4097dd). This provision goes far beyond the limitations on any public officer in the use of force. This provision evidently applies, no matter how arbitrary or unreasonable the conduct of the driver, no matter how great the force he used, and no matter how great the injury to the person ejected. In other words, under this provision, any passenger failing to obey the driver is not only guilty of a misdemeanor, but becomes an outlaw.

In the court below, the appellant argued that the statute constituted an unconstitutional delegation of legislative power, and the court below overruled this contention. It is admitted that the question of delegation of power, as such, is not a Federal question, but one arising under the State constitution. Therefore, we do not urge this point here. There is a phase to this question, how-

ever, which is definitely Federal in character; namely, that if the delegation of power is such as to clothe private persons with arbitrary governmental power, such a delegation is violative of the due process clause of the Fourteenth Amendment. See *Washington ex rel. Seattle Title Trust Co.* v. *Roberge*, 278 U. S. 116. As in the *Roberge* case, so here, arbitrary governmental power is vested in the carriers and their agents who are private persons. The difference between the *Roberge* case and the one at bar lies in the fact that here the statute in a blanket manner makes each driver of a motor vehicle a special policeman (Sec. 4097cc). There is nothing on the face of the statute to show that the driver must pass any tests in order to assume the duties of a public officer. This provision only accentuates the fact that the employees of the transportation company are clothed with arbitrary governmental power. Surely, had the statute in the *Roberge* case similarly designated all property owners as zoning commissioners, that would hardly have affected the ruling in that case.

We submit that the law under consideration is so arbitrary and unreasonable on its face, that irrespective of any application, it is contrary to the due process clause of the Fourteenth Amendment.

III

The statute is unconstitutional under the equal protection clause of the Fourteenth Amendment.

What was said above was based on the assumption (contrary to fact) that the treatment accorded to both white and colored persons is exactly the same. It is a matter of common knowledge that the treatment is not

the same, and this Court can take judicial notice of the fact that the treatment of the two races results in discrimination against the colored, not against the white, race.

The provision in the statute requiring no discrimination in the accommodations (Sec. 4097aa) gives only lip service to the decisions of this Court that segregation of races is violative of the equal protection clause, unless equal accommodations are made available both to white and colored persons. Equal accomodations are not provided, and that is a fact known to everybody. In operation and effect, the statute, and the rule of the carrier, result in unequal accomodations. Cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356.

Even if equal accommodations were provided, however, there would still be a violation of the equal protection clause if the service provided is discriminatory.

We must appeal to this Court for a reconsideration of its own fundamental concepts underlying this question of race discrimination. We submit that to say that segregation of races in public transportation is not violative of the equal protection clause, so long as equal *service* is rendered, is a contradiction in terms. The *segregation* is the very thing that makes the service unequal and discriminatory, by far more so than differences in the comfort of the seats, the amount of congestion, the age, model, speed, vibrations of the buses, and all other physical factors which are attributes of the transportation service.

A carrier by motor vehicle, like a carrier by rail, water or air does not merely furnish accommodations for carrying passengers from one point to another. The carrier furnishes a *service* which has attributes other than, and in addition to, the physical facilities used for

the act of transporting. The sum total of these attributes constitute what one may call the *quality* of service. Each passenger is entitled to the same quality of service as any other passenger. This is what is meant by equal and non-discriminatory service. If it is part of the service to furnish a luncheon or supper to the passengers, as is done by the air lines, each passenger is entitled to the luncheon or supper, and no passenger may be discriminated against. If, as part of the service, passengers are courteously treated, as they should be by the employees of all carriers, each passenger has a right to receive the same courteous treatment as any other passenger. In the rendition of transportation service, it is implied that passengers would be free from physical abuse on the part of the carrier or its agents, and no passenger may be discriminated against by being subjected to such abuse. We submit that it is not too much to expect that passengers be free from psychological or social abuse on the part of the carrier and its agents. Many persons would much rather submit to physical abuse than to abuse because of their race, which is treated as if it were a social stigma.

The word "white", or the word "colored" denotes a person whose skin has a white or black pigment, or a blend of the two; just as the words "aryan", and "non-aryan" denote persons of certain anthropological classification. But the words "white" and "colored", like the words "aryan" and "non-aryan",* also bear connotations which are far reaching. They are employed by some persons not as descriptive, but as evaluative, terms. They are intended as, and have the effect of, designations of "superiority" and "inferiority." When thus used, it makes little difference whether the words used are

* Technically these words refer to a specific language rather than an ethnic group.

"white" and "colored", or "socially superior" and "socially inferior." The effect is the same.

If, as part of a transportation service, some passengers are enabled to ride in comfort, while others are subjected to discomfort, there is discrimination; and it is of little importance whether the discomfort results from a hard seat, or from being clothed with indicia of inferiority. And if this unequal treatment is meted out to the passengers by the carrier under the authority of the State, there is a violation of the equal protection clause of the Fourteenth Amendment. A fortiori, a state law, the operation and effect of which is to *require* such unequal treatment, must be held violative of this constitutional prohibition.

CONCLUSION

It is respectfully urged that the statute here involved be declared unconstitutional and the case ordered dismissed.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE.

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SUPREME COURT OF THE UNITED STATES.

No. 704.—October Term, 1945.

Irene Morgan, Appellant, vs. Commonwealth of Virginia. } Appeal from the Supreme Court of Appeals of the State of Virginia.

[June 3, 1946.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal brings to this Court the question of the constitutionality of an act of Virginia,[1] which requires all passenger motor vehicle carriers, both interstate and intrastate,[2] to separate without discrimination[3] the white and colored passengers in their motor buses so that contiguous seats will not be occupied by persons of different races at the same time. A violation of the requirement of separation by the carrier is a misdemeanor.[4] The driver or other person in charge is directed and required to increase or decrease the space allotted to the respective races as may be necessary or proper and may require passengers to change their seats to comply with the allocation. The operator's failure to enforce the provisions is made a misdemeanor.[5]

These regulations were applied to an interstate passenger, this appellant, on a motor vehicle then making an interstate run or trip. According to the statement of fact by the Supreme Court of Appeals of Virginia, appellant, who is a Negro, was traveling on a motor common carrier, operating under the above-mentioned statute, from Gloucester County, Virginia, through the District of Columbia, to Baltimore, Maryland, the destination of the bus. There were other passengers, both white and colored. On her refusal to accede to a request of the driver to move to a back seat, which was partly occupied by other colored passengers, so as to permit the seat that she vacated to be used by white

[1] Virginia Code of 1942, §§ 4097z to 4097dd inclusive. The sections are derived from an act of General Assembly of Virginia of 1930. Acts of Assembly, Va. 1930, p. 343.

[2] *Id.*, §§ 4097z, 4097m, 4097s; Morgan v. Commonwealth, 184 Va. 24, 39.

[3] *Id.*, § 4097aa.

[4] *Id.*, § 4097z; § 4097bb.

[5] *Id.*, § 4097bb.

passengers, a warrant was obtained and appellant was arrested, tried and convicted of a violation of Section 4097dd of the Virginia Code.[6] On a writ of error the conviction was affirmed by the Supreme Court of Appeals of Virginia. 184 Va. 24. The Court of Appeals interpreted the Virginia statute as applicable to appellant since the statute "embraces all motor vehicles and all passengers, both interstate and intrastate."[7] The Court of Appeals refused to accept appellant's contention that the statute applied was invalid as a delegation of legislative power to the carrier by a concurrent holding "that no power is delegated to the carrier to legislate . . . . The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier." *Id.*, at 38. No complaint is made as to these interpretations of the Virginia statute by the Virginia court.[8]

The errors of the Court of Appeals that are assigned and relied upon by appellant are in form only two. The first is that the decision is repugnant to Clause 3, Section 8, Article I of the Constitution of the United States,[9] and the second the holding that powers reserved to the states by the Tenth Amendment include the

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[6] "4097dd. Violation by passengers; misdemeanor; ejection.—All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace: and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

[7] Morgan v. Commonwealth, *supra*, 37. Cf. Smith v. State, 100 Tenn. 491; Alabama & Vicksburg R. R. Co. v. Morris, 103 Miss. 511; Southern Ry. Co. v. Norton, 112 Miss. 302.

[8] Compare Hebert v. Louisiana, 272 U. S. 312, 317; General Trading Co. v. Tax Comm'n, 322 U. S. 335, 337.

[9] "Section 8. The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

power to require an interstate motor passenger to occupy a seat restricted for the use of his race. Actually, the first question alone needs consideration for if the statute unlawfully burdens interstate commerce, the reserved powers of the state will not validate it.[10]

We think, as the Court of Appeals apparently did, that the appellant is a proper person to challenge the validity of this statute as a burden on commerce.[11] If it is an invalid burden, the conviction under it would fail. The statute affects appellant as well as the transportation company. Constitutional protection against burdens on commerce is for her benefit on a criminal trial for violation of the challenged statute. *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Federation of Labor* v. *McAdory*, 325 U. S. 450, 463.

This Court frequently must determine the validity of state statutes that are attacked as unconstitutional interferences with the national power over interstate commerce. This appeal presents that question as to a statute that compels racial segregation of interstate passengers in vehicles moving interstate.[12]

The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety.[13] There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose.[14] Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation.[15] Too true it is that

[10] Case v. Bowles, No. 261 this Term, decided February 4, 1946, slip opinion p. 6.

[11] Cf. Edwards v. California, 314 U. S. 160, 172, n. 1.

[12] When passing upon a rule of a carrier that required segregation of an interstate passenger, this Court said: "And we must keep in mind that we are not dealing with the law of a State attempting a regulation of interstate commerce beyond its power to make." Chiles v. Chesapeake & Ohio Railway, 218 U. S. 71, 75.

[13] Cf. Gwin, etc., Inc. v. Henneford, 305 U. S. 434, 439; Mitz v. Baldwin, 289 U. S. 346, 352; Welch Co. v. New Hampshire, 306 U. S. 79, 84.

[14] Southern Pacific Co. v. Arizona, 325 U. S. 761, 766-71.

[15] Cooley v. Board of Wardens, 12 How. 299, 319; The Minnesota Rate Cases, 230 U. S. 352, 402; Kelly v. Washington, 302 U. S. 1, 10.

the principle lacks in precision. Although the quality of such a principle is abstract, its application to the facts of a situation created by the attempted enforcement of a statute brings about a specific determination as to whether or not the statute in question is a burden on commerce. Within the broad limits of the principle, the cases turn on their own facts.

In the field of transportation, there have been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly enact legislation which has predominantly only a local influence on the course of commerce.[16] It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce.[17]

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[16] *Statutes or orders dealing with safety of operations*: Smith *v.* Alabama, 124 U. S. 465 (Alabama statute requiring an examination and license of train engineers before operating in the state); Nashville, &c. Railway *v.* Alabama, 128 U. S. 96 (Statute requiring examination of railroad employees as to vision and color blindness); N. Y., N. H. & H. Railroad *v.* New York, 165 U. S. 628 (N. Y. statute forbidding the use of furnaces or stoves in passenger cars and requiring guard-posts on railroad bridges); Erb *v.* Morasch, 177 U. S. 584 (Municipal ordinance limiting speed of trains in city to 6 miles an hour); Atlantic Coast Line *v.* Georgia, 234 U. S. 280 (Georgia statute requiring electric headlights on locomotives); Morris *v.* Duby, 274 U. S. 135 (Weight restrictions on motor carriers imposed by order of Oregon highway commission); Sproles *v.* Binford, 286 U. S. 374 (Size and weight restrictions on trucks imposed by Texas statute); S. C. Hwy. Dept. *v.* Barnwell Bros., 303 U. S. 177 (Statute restricting weight and size of motor carriers); Maurer *v.* Hamilton, 309 U. S. 598 (Penna. statute forbidding the use of its highways to any vehicle carrying any other vehicle over the head of the operator of the vehicle); Terminal Assn. *v.* Trainmen, 318 U. S. 1 (Illinois statute requiring cabooses on freight trains).

Statutes or orders requiring local train service: Gladson *v.* Minnesota, 166 U. S. 427 (State statute requiring intrastate train to stop at county seat to take on and discharge passengers); Lake Shore & Mich. South. Railway *v.* Ohio, 173 U. S. 285 (Statute requiring three trains daily, if so many are run, to stop at each city containing over 3,000 inhabitants as applied to interstate trains); Atlantic Coast Line *v.* N. Car. Corp. Com'n, 206 U. S. 1 (Order regulating train service, particularly requiring train to permit connection with through trains at junction point); Mo. Pac. Ry. Co. *v.* Kansas, 216 U. S. 262 (Order directing the operation of intrastate passenger train service over specified route).

Statutes dealing with employment of labor—full crew laws: Chicago, R. I. & Pac. Ry. Co. *v.* Arkansas, 219 U. S. 453 (Arkansas full crew law applied to interstate trains); St. L. & Iron Mtn. Ry. *v.* Arkansas, 240 U. S. 518 (Arkansas full crew laws applied to switching crews); Missouri Pacific R. Co. *v.* Norwood, 283 U. S. 249 (Arkansas full crew laws applied to freight and switching crews.)

[17] *Statutes or orders dealing with safety of operations*: Kansas Southern Ry. *v.* Kaw Valley Dist., 233 U. S. 75 (Order requiring railroad to remove its bridges over river for flood control purposes); South Covington Ry. *v.*

Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional.[18] The courts could not invalidate federal legislation for the same reason because Congress, within the limits of the Fifth Amendment, has authority to burden commerce if that seems to it a desirable means of accomplishing a permitted end.[19]

This statute is attacked on the ground that it imposes undue burdens on interstate commerce. It is said by the Court of Appeals to have been passed in the exercise of the state's police power to avoid friction between the races. But this Court pointed out years ago "that a State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power."[20] Burdens upon commerce are those actions of a state which directly "impair the usefulness of its facilities for such

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Covington, 235 U. S. 537 (Ordinances regulating the number of passengers to be carried in, the number of cars to be run and the temperature of an interstate street railway car invalid; those requiring rails on front and rear platform, ventilation and cleaning valid); Seaboard Air Line Ry. v. Blackwell, 244 U. S. 310 (Georgia Blow Post Law requiring train to blow whistle and slow down almost to a stop at each grade crossing where numerous grade crossings were involved. Cf. Southern Railway Co. v. King, 217 U. S. 524, where answer held insufficient to permit proof of burden of the statute on interstate commerce); Southern Pacific Co. v. Arizona, 325 U. S. 761 (Statute limiting number of cars in freight train to 70 and passenger cars to 14.).

Statutes or orders requiring local train service: Illinois Central Railroad Co. v. Illinois, 163 U. S. 142 (Statute applied to require fast mail train to detour from main line in order to stop at station for the taking on and discharge of passengers); Cleveland, &c. Ry. Co. v. Illinois, 177 U. S. 514 (Ill. statute requiring interstate train to stop at each station); Mississippi R. R. Com. v. Illinois Cent. R. R., 203 U. S. 335 (Order of commission requiring interstate train to stop at small town); Atlantic Coast Line v. Wharton, 207 U. S. 328 (S. C. statute and railroad commission order requiring interstate train to stop at small town); St. Louis S. W. Ry. v. Arkansas, 217 U. S. 136 (Statute and order requiring delivery of freight cars to local shippers); Herndon v. Chi., Rock Island & Pac. Ry., 218 U. S. 135 (Statute requiring interstate train to stop at junction point); Chi., B. & Q. Ry. v. Wisconsin R. R. Com., 237 U. S. 220 (Wisconsin statute requiring interstate train to stop at villages containing 200 or more inhabitants); Missouri, Kans. & Tex. Ry. Co. v. Texas, 245 U. S. 484 (Order requiring trains to start on time and fixing time allowed for stops at junctions en route); St. Louis & S. F. Ry. v. Pub. Serv. Comm., 254 U. S. 535 (Order requiring through trains to detour through a small town); St. L.-S. F. Ry. v. Pub. Serv. Comp., 261 U. S. 369 (Order requiring that interstate trains be stopped at small town).

[18] See Southern Pacific Co. v. Arizona, 325 U. S. at 770.

[19] Compare United States v. Carolene Products Co., 304 U. S. 144, 146.

[20] Kansas Southern Ry. v. Kaw Valley Dist., 233 U. S. 75, 79.

traffic."[21] That impairment, we think, may arise from other causes than costs or long delays. A burden may arise from a state statute which requires interstate passengers to order their movements on the vehicle in accordance with local rather than national requirements.

On appellant's journey, this statute required that she sit in designated seats in Virginia.[22] Changes in seat designation might be made "at any time" during the journey when "necessary or proper for the comfort and convenience of passengers." This occurred in this instance. Upon such change of designation, the statute authorizes the operator of the vehicle to require, as he did here, "any passenger to change his or her seat as it may be necessary or proper."[23] An interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group. On arrival at the District of Columbia line, the appellant would have had freedom to occupy any available seat and so to the end of her journey.

Interstate passengers traveling via motors between the north and south or the east and west may pass through Virginia on through lines in the day or in the night. The large buses approach the comfort of pullmans and have seats convenient for rest. On such interstate journeys the enforcement of the requirements for reseating would be disturbing.

Appellant's argument, properly we think, includes facts bearing on interstate motor transportation beyond those immediately involved in this journey under the Virginia statutory regulations. To appraise the weight of the burden of the Virginia statute on interstate commerce, related statutes of other states are important to show whether there are cumulative effects which may make local regulation impracticable. Eighteen states, it appears, prohibit racial separation on public carriers.[24] Ten require sep-

[21] Illinois Central Railroad Co. v. Illinois, 163 U. S. 142, 154.

[22] The Virginia Code of 1942, section 67, defines a colored person, for the purpose of the Code, as follows: "Every person in whom there is ascertainable any negro blood shall be deemed and taken to be a colored person . . . ." Provisions for vital statistics make a record of the racial line of Virginia inhabitants. Sections 1574 and 5099a.

[23] § 4097bb.

[24] Cal. Civ. Code (Deering), 1941, Sec. 51-54; Colo. Stat. Ann., 1935, Ch. 35, Sec. 1-10; Conn. Gen. Stat. (Supp. 1933), Sec. 1160b; Ill. Rev. Stat., 1941, Ch. 38, Sec. 125-128g; Ind. Stat. (Burns), 1933, Sec. 10-901, 10-902; Iowa

aration on motor carriers.[25] Of these Alabama applies specifically to interstate passengers with an exception for interstate passengers with through tickets from states without laws on separation of passengers.[26] The language of the other acts, like this Virginia statute before the Court of Appeals' decision in this case, may be said to be susceptible to an interpretation that they do or do not apply to interstate passengers.

In states where separation of races is required in motor vehicles, a method of identification as white or colored must be employed. This may be done by definition. Any ascertainable Negro blood identifies a person as colored for purposes of separation in some states.[27] In the other states which require the separation of the races in motor carriers, apparently no definition generally applicable or made for the purposes of the statute is given. Court definition or further legislative enactments would be required to clarify the line between the races. Obviously there may be changes by legislation in the definition.[28]

The interferences to interstate commerce which arise from state regulation of racial association on interstate vehicles has long been recognized. Such regulation hampers freedom of choice in selecting accommodations. The recent changes in transportation brought about by the coming of automobiles does not seem of

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Code, 1939, Sec. 13251-13252; Kan. Gen. Stat., 1935, Sec. 21-2424; Mass. Laws (Michie), 1933, Chap. 272, Sec. 98, as amended 1934; Mich. Stat. Ann., Stat., 1929, Sec. 23-101; N. J. Rev. Stat., 1937, Sec. 10:1-2 to 10:1-7; N. Y. Civil Rights Law (McKinney), Sec. 40-41; Ohio Code (Throckmorton), 1940, Sec. 12940-12942; Pa. Stat. (Purdon), Tit. 18, Sec. 4654 to 4655; R. I. Gen. Laws, 1938, Ch. 606, Sec. 28-29; Wash. Rev. Stat. (Remington), 1932, Sec. 2686 (semble); Wis. Stat., 1943, Sec. 340.75.

[25] Ala. Code, 1940, Tit. 48, Sec. 268; Ark. Stat., 1937 (Pope), Sec. 6921, 927, Acts 1943, p. 379; Ga. Code, 1933, Sec. 68-616; La. Gen. Stat. (Dart), 939, Sec. 5307-5309; Miss. Code, 1942, Sec. 7785; N. C. Gen. Stat. 1943, ec. 62-109; Okla. Stat. Ann., 1941, Tit. 47, 201-210; S. C. Code, 1942, ec. 8530-1; Tex. Pen. Code (Vernon), 1936, Art. 1659; Va. Code, 1942, ec. 4097z-4097dd.

[26] Ala. Code 1940, Tit. 48, Sec. 268.

[27] Ala. Code, 1940, Tit. 1, Sec. 2; Ark. Stat. (Pope), 1937, Sec. 1200 (separate coach law); Ga. Code (Michie Supp.), 1928, Sec. 2177; Okla. Const., rt. XXIII, Sec. 11; Va. Code (Michie), 1942, Sec. 67.

[28] Compare Va. Code, 1887, Sec. 49, providing that those who had one-urth or more Negro blood were to be considered colored. This was anged in 1910 (Acts, 1910, p. 581) to read one-sixteenth or more. It s again changed in 1930 by Acts, 1930, p. 97, to its present form, i. e., y ascertainable Negro blood. See note 22, *supra*.

great significance in the problem. People of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce. The factual situation set out in preceding paragraphs emphasizes the soundness of this Court's early conclusion in *Hall* v. *DeCuir*; 95 U. S. 485.

The *DeCuir* case arose under a statute of Louisiana interpreted by the courts of that state and this Court to require public carriers "to give all persons travelling in that State, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color." Page 487. Damages were awarded against Hall, the representative of the operator of a Mississippi river steamboat that traversed that river interstate from New Orleans to Vicksburg, for excluding in Louisiana the defendant in error, a colored person, from a cabin reserved for whites. This Court reversed for reasons well stated in the words of Mr. Chief Justice Waite.[29] As our previous discussion dem-

[29] 95 U. S. at 489:

"It was to meet just such a case that the commercial clause in the Constitution was adopted. The river Mississippi passes through or along the borders of ten different States, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion, likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay more, it could prescribe rules by which the carrier must be governed within the State in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it Congress, which is untrammelled by State lines, has been invested with the exclusive legislative power of determining what such regulations shall be. If this statute can be enforced against those engaged in inter-state commerce, it may be as well against those engaged in foreign; and the master of a ship clearing from New Orleans for Liverpool, having passengers on board, would be compelled to carry all, white and colored, in the same cabin during his passage down the river, or be subject to an action for damages, 'exemplary as well as actual,' by any one who felt himself aggrieved because he had been excluded on account of his color."

See Louisville, &c. Railway Co. v. Mississippi, 133 U. S. 587, 590-91.

onstrates, the transportation difficulties arising from a statute that requires commingling of the races, as in the *DeCuir* case, are increased by one that requires separation, as here.[30] Other federal courts have looked upon racial separation statutes as applied to interstate passengers as burdens upon commerce.[31]

In weighing the factors that enter into our conclusion as to whether this statute so burdens interstate commerce or so infringes the requirements of national uniformity as to be invalid, we are mindful of the fact that conditions vary between northern or western states such as Maine or Montana, with practically no colored population; industrial states such as Illinois, Ohio, New Jersey and Pennsylvania with a small, although appreciable, percentage of colored citizens; and the states of the deep south with percentages of from twenty-five to nearly fifty per cent colored, all

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A regulation of the number of passengers on interstate street cars was held invalid in South Covington Ry. *v.* Covington, 235 U. S. 537, 547. This Court said at 547-48:

> "If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced, and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in Hall *v.* DeCuir, 95 U. S. 485, 489, 'commerce cannot flourish in the midst of such embarrassments.'"

[30] South Covington, &c. Ry. Co. *v.* Kentucky, 252 U. S. 399, relied upon by appellee, does not decide to the contrary of the holding in Hall *v.* DeCuir. In that case a carrier corporation was convicted in the Kentucky courts of violation of a state statute that required it to furnish cars with separate compartments for white and colored. It operated street cars interstate over the lines of another corporation that owned tracks that were wholly intrastate. The Court of Appeals of Kentucky held the conviction good on the ground that the offending act was the operation of the intrastate railroad in violation of the state statute. It was said that the statute did not apply to an interstate passenger. S. C. & C. Street Ry. Co. *v.* Commonwealth, 181 Ky. 449, 454. The Court of Appeals referred, with continual approval, at that point to Chiles *v.* Chesapeake & Ohio Ry. Co., 125 Ky. 299, 304: "It is admitted that section 795-801 of the Kentucky Statutes, requiring all railroad companies to furnish separate coaches for transportation of white and colored passengers, and imposing upon the company and conductors a penalty for refusing or failing to carry out the provisions of the law, does not apply to appellant, who was an interstate passenger; it being conceded that the statute is only operative within the territorial limits of this State, and effective as to passengers who travel from one point within the State to another place within its border." This Court accepted this application of the state statute and said it "is not a regulation of interstate commerce." Page 403. Probably what was meant by the opinions was that under the Kentucky act the company with wholly intrastate mileage must operate cars with separate compartments for intrastate passengers.

[31] Anderson *v.* Louisville & N. R. Co., 62 Fed. 46, 48; Washington, B. & A. Electric R. Co. *v.* Waller, 289 Fed. 598. See also Hart *v.* State, 100 Md. 595; Carrey *v.* Spencer, 36 N. Y. Supp. 886.

with varying densities of the white and colored race in certain localities. Local efforts to promote amicable relations in difficult areas by legislative segregation in interstate transportation emerge from the latter racial distribution. As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid.

Reversed.

Mr. Justice RUTLEDGE concurs in the result.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK concurring.

The Commerce Clause of the Constitution provides that "Congress shall have power . . . to regulate commerce . . . among the several States." I have believed, and still believe, that this provision means that Congress can regulate commerce and that the courts cannot. But in a series of cases decided in recent years this Court over my protest has held that the Commerce Clause justifies this Court in nullifying state legislation which this Court concludes imposes an "undue burden" on interstate commerce.[1] I think that whether state legislation imposes an "undue burden" on interstate commerce raises pure questions of policy, which the Constitution intended should be resolved by the Congress.

Very recently a majority of this Court reasserted its power to invalidate state laws on the ground that such legislation put an

[1] Nippert *v.* Richmond, — U. S. —; Southern Pacific Co. *v.* Arizona, 325 U. S. 761; McCarrol *v.* Dixie Greyhound Lines, 309 U. S. 176; Gwin, White & Prince *v.* Henneford, 305 U. S. 434; Adams Mfg. Co. *v.* Storen, 304 U. S. 307.

undue burden on commerce. *Nippert* v. *Richmond*, *supra*; *Southern Pacific Co.* v. *Arizona*, *supra*. I thought then, and still believe, that in these cases the Court was assuming the role of a "super-legislature" in determining matters of governmental policy. *Id.*, at 787, n. 4.

But the Court, at least for the present, seems committed to this interpretation of the Commerce Clause. In the *Southern Pacific Co.* case, the Court, as I understand its opinion, found an "undue burden" because a state's requirement for shorter trains increased the cost of railroad operations and thereby delayed interstate commerce and impaired its efficiency. In the *Nippert* case a small tax imposed on a sales solicitor employed by concerns located outside of Virginia was found to be an "undue burden" even though a solicitor for Virginia concerns engaged in the same business would have been required to pay the same tax.

So long as the Court remains committed to the "undue burden on commerce formula," I must make decisions under it. The "burden on commerce" imposed by the Virginia law here under consideration seems to me to be of a far more serious nature than those of the *Nippert* or *Southern Pacific Company* cases. The *Southern Pacific Company* opinion, moreover, relied in part on the rule announced in *Hall* v. *DeCuir*, 95 U. S. 485, which case held that the Commerce Clause prohibits a state from passing laws which require that "on one side of a State line . . . passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate." The Court further said that "uniformity in the regulations by which . . . [a carrier] . . . is to be governed from one end to the other of his route is a necessity in his business" and that it was the responsibility of Congress, not the states, to determine "what such regulations shall be." The "undue burden on commerce formula" consequently requires the majority's decision. In view of the Court's present disposition to apply that formula, I acquiesce.

Mr. Justice FRANKFURTER concurring.

My brother Burton has stated with great force reasons for not invalidating the Virginia statute. But for me *Hall* v. *DeCuir*, 95 U. S. 485, is controlling. Since it was decided nearly seventy years ago, that case on several occasions has been approvingly

cited and has never been questioned. Chiefly for this reason I concur in the opinion of the Court.

The imposition upon national systems of transportation of a crazy-quilt of State laws would operate to burden commerce unreasonably, whether such contradictory and confusing State laws concern racial commingling or racial segregation. This does not imply the necessity for a nationally uniform regulation of arrangements for passengers on interstate carriers. Unlike other powers of Congress (see Art. I, § 8, cl. 1, concerning "Duties, Imposts and Excises"; Art. I, §8, cl. 4, concerning "Naturalization"; Art. I, § 8, cl. 4, concerning "Bankruptcies"), the power to regulate commerce does not require geographic uniformity. Congress may devise a national policy with due regard to varying interests of different regions. *E. g.*, 37 Stat. 699, 27 U. S. C. § 122; *Clark Distilling Co.* v. *West'n Md. Ry. Co.*, 242 U. S. 311; 45 Stat. 1084, 49 U. S. C. § 60; *Whitfield* v. *Ohio*, 297 U. S. 431. The States cannot impose diversity of treatment when such diverse treatment would result in unreasonable burdens on commerce. But Congress may effectively exercise its power under the Commerce Clause without the necessity of a blanket rule for the country.

Mr. Justice BURTON dissenting.

On the application of the interstate commerce clause of the Federal Constitution to this case, I find myself obliged to differ from the majority of the Court. I would sustain the Virginia statute against that clause. The issue is neither the desirability of the statute nor the constitutionality of racial segregation as such. The opinion of the Court does not claim that the Virginia statute, regulating seating arrangements for interstate passengers in motor vehicles, violates the Fourteenth Amendment or is in conflict with a federal statute. The Court holds this statute unconstitutional for but one reason. It holds that the burden imposed by the statute upon the nation's interest in interstate commerce so greatly outweighs the contribution made by the statute to the state's interest in its public welfare as to make it unconstitutional.

The undue burden upon interstate commerce thus relied upon by the Court is not complained of by the Federal Government, by any state, or by any carrier. This statute has been in effect

since 1930. The carrier concerned is operating under regulations of its own which conform to the statute. The statute conforms to the policy adopted by Virginia as to steamboats (1900), electric or street cars and railroads (1902-1904).[1] Its validity has been unanimously upheld by the Supreme Court of Appeals of Virginia. The argument relied upon by the majority of this Court to establish the undue burden of this statute on interstate commerce is the lack of uniformity between its provisions and those of the laws of other states on the subject of the racial separation of interstate passengers on motor vehicles.

If the mere diversity between the Virginia statute and comparable statutes of other states is so serious as to render the Virginia statute invalid, it probably means that the comparable statutes of those other states, being diverse from it and from each other, are equally invalid. This is especially true under that assumption of the majority which disregards sectional interstate travel between neighboring states having similar laws, to hold "that seating arrangements for the different races in interstate motor travel require a *single, uniform rule to protect national travel.*" (Italics supplied.) More specifically, the opinion of the Court indicates that the laws of the 10 contiguous states of Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Texas and Oklahoma require racial separation of passengers on motor carriers, while those of 18 other states prohibit racial separation of passengers on public carriers. On the precedent of this case, the laws of the 10 states requiring racial separation apparently can be invalidated because of their sharp diversity from the laws in the rest of the Union, or, in a lesser degree, because of their diversity from one another. Such invalidation, on the ground of lack of nation-wide uniformity, may lead to questioning the validity of the laws of the 18 states now prohibiting racial separation of passengers, for those laws likewise differ sharply from laws on the same subject in other parts of the Union and, in a lesser degree, from one another. In the absence of federal law, this may eliminate state regulation of racial separation in the seating of interstate passengers on motor vehicles

[1] Steamboats: Acts of 1900, p. 340; electric or street cars: Acts of 1902-1904, p. 990; railroads: Acts of 1902-1904, p. 987. Va. Code Ann., 1942, §§ 4022-4025; 3978-3983; 3962-3969.

and leave the regulation of the subject to the respective carriers.

The present decision will lead to the questioning of the validity of statutory regulation of the seating of intrastate passengers in the same motor vehicles with interstate passengers. The decision may also result in increased lack of uniformity between regulations as to seating arrangements on motor vehicles limited to intrastate passengers in a given State and those on motor vehicles engaged in interstate business in the same state or on connecting routes.

The basic weakness in the appellant's case is the lack of facts and findings essential to demonstrate the existence of such a serious and major burden upon the national interest in interstate commerce as to outweigh whatever state or local benefits are attributable to the statute and which would be lost by its invalidation. The Court recognizes that it serves as "the final arbiter of the competing demands of state and national interests"[2] and that it must fairly determine, in the absence of Congressional action, whether the state statute actually imposes such an undue burden upon interstate commerce as to invalidate that statute. In weighing these competing demands, if this Court is to justify the invalidation of this statute, it must, first of all, be satisfied that the many years of experience of the state and the carrier that are reflected in this state law should be set aside. It represents the tested public policy of Virginia regularly enacted, long maintained and currently observed. The officially declared state interests, even when affecting interstate commerce, should not be laid aside summarily by this Court in the absence of Congressional action. It is only Congress that can supply affirmative national uniformity of action.

In *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 768-769, 770, this Court speaking through the late Chief Justice said:

> "In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases, in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of

[2] Southern Pacific Co. v. Arizona, 325 U. S. 761, 769.

the competing demands of the state and national interests involved.[3]

. . . . . .

"But in general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because it has appreciated the destructive consequences to the commerce of the nation if their [i. e. the courts'] protection were withdrawn. . . . and has been aware that in their application *state laws will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment.*[4] . . . . Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our constitutional system. There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern." (Italics supplied.)

The above quoted requirement of a factual establishment of "a sure basis" for an informed judgment by this Court calls for a firm and demonstrable basis of action on the part of this Court. In the record of this case there are no findings of fact that demonstrate adequately the excessiveness of the burden, if any, which the Virginia statute has imposed upon interstate commerce, during the many years since its enactment, in comparison with the resulting effect in Virginia of the invalidation of this statute.[5] The Court relies largely upon the recital of a nation-wide diversity among state statutes on this subject without a demonstration of the factual situation in those states, and especially in Virginia. The Court therefore is not able in this case to make that necessary "appraisal and accommodation of the competing demands of the state and national interests involved"

[3] See Parker v. Brown, 317 U. S. 341, 362; Di Santo v. Pennsylvania, 273 U. S. 34, 44.

[4] Terminal Assn. v. Trainmen, 318 U. S. 1, 8.

[5] Hall v. DeCuir, 95 U. S. 485, does not require the conclusion reached by the Court in this case. The Louisiana statute in the *DeCuir* case could have been invalidated, at that time and place, as an undue burden on interstate commerce under the rules clearly stated by Chief Justice Stone in Southern Pacific Co. v. Arizona, *supra*, and as applied in this dissenting opinion. If the *DeCuir* case is followed without weighing the surrounding facts it would invalidate today statutes in New England states prohibiting racial separation in seating arrangements on carriers, which would not be invalidated under the doctrine stated in the *Arizona* case.

which should be the foundation for passing upon the validity of a state statute of long standing and of important local significance in the exercise of the state police power.

The Court makes its own further assumption that the question of racial separation of interstate passengers in motor vehicle carriers requires national uniformity of treatment rather than diversity of treatment at this time. The inaction of Congress is an important indication that, in the opinion of Congress, this issue is better met without nationally uniform affirmative regulation than with it. Legislation raising the issue long has been, and is now, pending before Congress but has not reached the floor of either House.[6] The fact that 18 states have prohibited in some degree racial separation in public carriers is important progress in the direction of uniformity. The fact, however, that 10 contiguous states in some degree require, by state law, some racial separation of passengers on motor carriers indicates a different appraisal by them of the needs and conditions in those areas than in others. The remaining 20 states have not gone equally far in either direction. This recital of existing legislative diversity is evidence against the validity of the assumption by this Court that there exists today a requirement of a single uniform national rule on the subject.

It is a fundamental concept of our Constitution that where conditions are diverse the solution of problems arising out of them may well come through the application of diversified treatment matching the diversified needs as determined by our local governments. Uniformity of treatment is appropriate where a substantial uniformity of conditions exists.

[6] See H. R. 8821, 75th Cong., 3d Sess., 83 Cong. Rec. 74; H. R. 182, 76th Cong., 1st Sess., 84 Cong. Rec. 27; H. R. 112, 77th Cong., 1st Sess., 87 Cong. Rec. 13.